

# **EXHIBIT H**

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11 **LEASEWEB USA, INC.**

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **PERFECT 10, INC., a California**  
15 **corporation,**

16 **Plaintiff,**

17 **vs.**

18 **OCOM B.V., a Netherlands Limited**  
19 **Liability Company, et al.,**

20 **Defendants.**

21 Case No. CV14-00808-JFW (VBKx)

22 **DEFENDANT LEASEWEB USA,**  
**INC.'S NOTICE OF MOTION AND**  
**MOTION TO DISMISS FIRST**  
**AMENDED COMPLAINT**

23 Date: April 28, 2014

24 Time: 1:30 p.m.

25 Dept.: 16 – Spring Street Floor

26 Judge: Honorable John F. Walter

27 FAC Filed: March 4, 2014

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# NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE THAT on April 28, 2014 at 1:30 p.m., or as soon thereafter as counsel may be heard, before the Honorable John F. Walter, in Courtroom 16 of the United States Courthouse for the Central District of California, Western Division, 312 North Spring Street, Los Angeles, California, Defendant LeaseWeb USA, Inc. (“LeaseWeb USA”) will and hereby does move the Court to dismiss the First Amendment Complaint for Copyright Infringement pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction and Federal Rule Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on March 26, 2014. The parties scheduled the conference immediately after being notified that the Court had denied their stipulated briefing schedule. Counsel were unable to reach a resolution of this motion.

As set forth in the accompanying Memorandum of Points and Authorities and the attached declarations in support, there is good cause for the relief requested. Personal jurisdiction is lacking over LeaseWeb USA, a Delaware Corporation based in Manassas, Virginia, based on conduct related to LeaseWeb USA's provision of dedicated hosting to customers located in Venezuela and Argentina.

Plaintiff Perfect 10, Inc. (“P10”) also fails to state a claim for copyright infringement upon which relief may be granted. First, the Copyright Act does not reach images hosted on servers located overseas, and to the extent P10 asserts claims against LeaseWeb USA based upon other defendants’ hosting of images on foreign servers, those claims must be dismissed. Second, P10’s claims for direct copyright infringement fail because P10 has failed to adequately allege that LeaseWeb USA acted with volition to cause any infringement. Finally, P10’s claims for contributory infringement fail because there is no underlying

1 infringement for claims based on images hosted on servers outside the United  
2 States, P10 does not adequately allege which website directly infringed which  
3 copyrighted images, who the direct infringers were or that LeaseWeb USA had  
4 actual knowledge of the specific infringing material, and P10 does not allege that  
5 LeaseWeb USA induced, caused, or materially contributed to the infringing  
6 conduct.

7  
8 DATED: March 28, 2014

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9  
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# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

This case is the latest in the long line of copyright cases brought by Plaintiff Perfect 10, Inc. (“P10”) against webhosts, search engines, and other entities based on alleged infringements committed by third parties unaffiliated with defendants. This time, P10 brings copyright infringement claims against LeaseWeb USA, Inc. (“LeaseWeb USA”), LeaseWeb Netherlands B.V., formerly known as LeaseWeb B.V., (“LeaseWeb Netherlands”), LeaseWeb Deutschland GmbH (“LeaseWeb Germany”), and Ocom B.V. (“Ocom”). LeaseWeb USA is a back-end business-to-business provider of dedicated servers used to host websites. It provides those servers and Internet connectivity to users that sign up through its website, [leaseweb.com](http://leaseweb.com). Once users sign up for LeaseWeb USA’s services, they are provided with servers they may use for any purpose, and LeaseWeb USA does not have access to customers’ data on those servers.

P10’s claims arise out of LeaseWeb USA’s alleged failure to remove specific infringing images from its customers’ websites in response to “DMCA” notices. These notices, however, were not served on the entities responsible for running the sites where the images were allegedly found—poringa.net, ultraforos.com, ultraforos.net, etc.—but on LeaseWeb USA itself, which merely provides servers and connectivity to those sites (in the case of poringa.net, indirectly). If successful, P10’s claims would stretch copyright infringement law to hold web hosts liable for copyright infringement by users of third party websites—users with whom they have no contact. But as with most of its previous efforts, P10’s claims against LeaseWeb USA fail, both because this court lacks jurisdiction over LeaseWeb USA, and P10 has failed to state a claim for copyright infringement.

First, this Court does not have personal jurisdiction over LeaseWeb USA. LeaseWeb USA has no offices, employees or bank accounts in California. The

1 allegedly infringing websites LeaseWeb USA hosted are not owned or operated by  
 2 California companies. None of the allegedly infringing websites are hosted in  
 3 California. Haling LeaseWeb USA into a California court based on contracts with  
 4 foreign entities that themselves did nothing to aim their conduct at California  
 5 offends notions of fair play and justice. Without jurisdiction, this case must be  
 6 dismissed.

7 Second, controlling Ninth Circuit law holds that the location of servers  
 8 hosting allegedly infringing images determines the location of the images. Because  
 9 the Ninth Circuit has held that the U.S. Copyright Act does not apply to images  
 10 hosted abroad, any claims against LeaseWeb USA based upon other defendants'  
 11 hosting of images on foreign servers must be dismissed.<sup>1</sup>

12 Third, P10's direct copyright infringement claims against LeaseWeb USA  
 13 must be dismissed because P10 has failed to adequately allege that LeaseWeb USA  
 14 acted with volition to cause any infringement. P10 alleges only that LeaseWeb USA  
 15 provided backend dedicated hosting services to third parties whose users allegedly  
 16 uploaded infringing images. But providers like LeaseWeb USA that offer dedicated  
 17 hosting services are merely passive conduits, and they cannot be held liable for  
 18 direct infringement absent allegations they volitionally acted to *cause* the  
 19 infringement. Holding providers like LeaseWeb USA directly liable for  
 20 infringement without alleging the hosting provider itself engaged in the allegedly  
 21 infringing activity would extend liability for direct copyright infringement beyond  
 22 existing case law.

23

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24 <sup>1</sup> The First Amended Complaint incorrectly identifies imgchili.net, imgchili.com,  
 25 imgtiger.com, imgserve.net, and Galleryworld.info as being hosted by other  
 26 Defendants in the United States. This is false, but for purposes of this motion to  
 27 dismiss, LeaseWeb USA assumes these allegations as true. To the extent P10  
 28 alleges that LeaseWeb USA should be liable for other defendants' conduct, claims  
 based on images hosted by these websites should be dismissed for the same  
 reasons as those applicable to sites hosted by LeaseWeb USA in the United States.

1           Fourth, P10’s claims for contributory infringement fail for three reasons. For  
 2 one, P10 has not adequately alleged an underlying direct infringement. For sites  
 3 other defendants hosted outside the United States, there is no direct infringement  
 4 because the U.S. Copyright Act does not reach them. And for sites allegedly hosted  
 5 in the United States, P10 does not allege which website directly infringed which  
 6 copyrighted images, when the infringement occurred, or whether the sites hosted by  
 7 LeaseWeb USA were direct infringers or whether *users* of those sites were the direct  
 8 infringers. Having failed to adequately allege an underlying direct infringement,  
 9 P10’s contributory infringement claim fails.

10           The contributory infringement claim also fails because P10 does not  
 11 adequately allege that LeaseWeb USA had *actual* knowledge of the specific  
 12 infringing material. P10 alleges only that it provided cursory “DMCA notices” to  
 13 LeaseWeb USA, but does not allege that those notices provided LeaseWeb USA  
 14 with the information necessary to establish actual notice.

15           Finally, the contributory infringement claim fails because P10 does not allege  
 16 that LeaseWeb USA induced, caused, or materially contributed to the infringing  
 17 conduct. Nowhere does P10 allege that LeaseWeb USA acted with culpable intent  
 18 or an unlawful objective. Instead, P10 alleges the opposite—that LeaseWeb USA  
 19 provided neutral dedicated hosting services to third-party sites whose users may  
 20 have uploaded allegedly infringing images. Nowhere does P10 allege that  
 21 LeaseWeb USA promoted its dedicated hosting services for copyright infringement.  
 22 And the DMCA protects LeaseWeb USA’s ability to route traffic which may  
 23 contain infringing material. 17 U.S.C. § 512(a). Nowhere does P10 allege that  
 24 LeaseWeb USA assisted any direct infringers. Rather, this case represents an effort  
 25 to hold liable anyone in the internet landscape that provides any support or  
 26 connectivity to websites whose users may have uploaded infringing images.

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1 Without these key allegations, the contributory infringement claims must be  
 2 dismissed.

3 P10's claims for copyright infringement should be dismissed for lack of  
 4 jurisdiction under Fed. R. Civ. P. 12(b)(2) and failure to state a claim under Fed. R.  
 5 Civ. P. 12(b)(6).

6 **II. STATEMENT OF FACTS**

7 **A. LeaseWeb USA, Inc.**

8 LeaseWeb USA is a Delaware corporation registered to do business in  
 9 Virginia. First Amended Complaint ("FAC") ¶ 11. Its headquarters and principal  
 10 place of business is in Manassas, Virginia. *See* FAC ¶ 11; Declaration of Dewey  
 11 Coerper in Support of LeaseWeb USA, Inc's Motion to Dismiss First Amended  
 12 Complaint ("Coerper Decl.") ¶ 3. LeaseWeb USA's *only* server facility used to host  
 13 websites is also in Manassas. Coerper Decl. ¶ 6.

14 LeaseWeb USA is a backend business-to-business dedicated hosting service  
 15 provider that provides connectivity and services to third-parties so they can host  
 16 websites on LeaseWeb USA's servers in Virginia. FAC ¶¶ 28, 30. As P10  
 17 recognizes throughout the FAC, LeaseWeb USA does not itself directly copy,  
 18 distribute or display content or images over the Internet, nor does it run or  
 19 administer user generated content sites that could contain infringing images users  
 20 uploaded. Instead, P10's claims for direct infringement are based solely on  
 21 LeaseWeb USA's provision of dedicated hosting to third parties, not any affirmative  
 22 action LeaseWeb USA itself has taken. *See e.g., id.*

23 **B. Perfect 10, Inc.**

24 P10 is a California corporation allegedly in the business of the production and  
 25 sale of copyrighted adult entertainment. FAC ¶ 19.<sup>2</sup> P10 previously published "the

27 <sup>2</sup> The stated facts are based on allegations in the FAC, and LeaseWeb USA  
 28 assumes these facts as true only for purposes of this motion to dismiss.

1 well-known magazine PERFECT 10,” which it claims to have closed “because of  
 2 rampant infringement.” *Id.* at ¶ 20. The FAC alleges that today Perfect 10’s derives  
 3 its revenues “predominantly from sales of memberships to its perfect10.com  
 4 website” which “features tasteful images of natural models.” *Id.* at ¶¶ 22-23. Those  
 5 current revenues are roughly \$70,000 a year. FAC ¶ 26. P10 is better known,  
 6 however, for bringing a string of copyright infringement lawsuits against a variety  
 7 of service providers, including Google, MasterCard, Visa, Amazon.com, and  
 8 Microsoft among others, seeking to hold them liable for alleged infringing activity  
 9 of others on the Internet.

10 **C. LeaseWeb USA’s Alleged Misconduct**

11 P10 alleges that LeaseWeb USA’s customers, not LeaseWeb USA itself, were  
 12 involved in the distribution and display of allegedly infringing images. FAC ¶ 28.  
 13 P10 alleges only that LeaseWeb USA provided dedicated hosting services to various  
 14 websites where the images were located. FAC ¶¶ 28, 30, 31.

15 P10 alleges that beginning in February 2013, it provided “the LeaseWeb  
 16 Defendants” with “at least 22 DMCA notices that have identified at least 12,220  
 17 infringing Perfect 10 images the LeaseWeb Defendants are making available for  
 18 viewing and copying, to millions of users.” FAC ¶ 34. P10 alleges that each  
 19 defendant “could have and should have ended the infringement by processing  
 20 Perfect 10’s DMCA notices and removing the infringing images or by refusing to  
 21 host the identified allegedly infringing websites.” *Id.* at ¶ 35.

22 Despite claims it cannot identify the owners of the allegedly infringing  
 23 websites (FAC ¶ 27), P10 identifies eight third-party websites it asserts improperly  
 24 displayed its copyrighted images. FAC ¶ 30. Those websites are: imgchili.net;  
 25 imgchili.com; imgtiger.com; imgserve.net; poringa.net; ultraforos.com;  
 26 ultraforos.net; and galleryworld.info. *Id.* Although P10 alleges that the LeaseWeb  
 27 Defendants hosted eight websites “on their servers located in Manassas, Virginia,” it  
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1 concedes that LeaseWeb USA hosted only three sites: poringa.net, ultraforos.com,  
 2 and ultraforos.net. *Id.* Plaintiff alleges the remaining websites were hosted by  
 3 either LeaseWeb Netherlands or LeaseWeb Germany. *Id.* Plaintiff alleges eleven  
 4 additional websites were or are hosted on servers in Germany or the Netherlands,  
 5 including pelotka.com, kadets.info, e-hentai.org, ero-advertising.com, fuskator.com,  
 6 and imgdino.com. FAC ¶ 32.

7 **D. LeaseWeb USA's Lack of Connections to California**

8 LeaseWeb USA is a Delaware corporation with its principal place of business  
 9 in Manassas, Virginia. FAC ¶ 11; Coerper Decl. ¶ 3. LeaseWeb USA has no  
 10 offices or employees in California—all of its employees are located in Virginia,  
 11 Colorado, and Massachusetts. Coerper Decl. ¶ 6. While LeaseWeb USA operates  
 12 certain networking equipment in California, that equipment is used solely to route  
 13 traffic. *Id.* at ¶ 8. None of the websites listed in the First Amended Complaint as  
 14 LeaseWeb USA clients are operated by companies based in California or are hosted  
 15 on servers in California. *Id.* at ¶ 9. LeaseWeb USA does not have an agent for  
 16 service of process in California. *Id.* at ¶ 7. It has no bank accounts in California.  
 17 Coerper Decl. ¶ 7.

18 None of LeaseWeb USA's customers who operate allegedly infringing  
 19 websites are in California. *Id.* at ¶ 9. The operator of Ultraforos.com and  
 20 Ultraforos.net is in Venezuela, and Poringa.net is a client of Wiroos, a reseller of  
 21 LeaseWeb USA's dedicated hosting located in Argentina. *Id.* Both are (or were at  
 22 the relevant times) hosted on servers in Manassas, Virginia, not California. *Id.*

23 **E. Plaintiff's Claim**

24 P10 alleges a single cause of action for copyright infringement against all  
 25 defendants, asserting they engaged in both direct and contributory infringement in  
 26 violation of the United States Copyright Act, 17 U.S.C. §§ 106 and 501. *See, e.g.*,  
 27 FAC ¶¶ 40, 44 (alleging direct and contributory infringement against LeaseWeb

1 USA). The FAC does not, however, identify or distinguish between the specific acts  
 2 that allegedly constitute direct infringement and those that allegedly constitute  
 3 contributory infringement.

4 **III. ARGUMENT**

5 **A. LeaseWeb USA is Not Subject to Jurisdiction in California**

6 Federal courts may exercise personal jurisdiction over a defendant under  
 7 principles of either general or specific jurisdiction. P10 cannot meet either standard.

8 1. LeaseWeb USA is Not Subject to General Jurisdiction

9 Because LeaseWeb USA lacks connections to California, this Court lacks  
 10 general jurisdiction over it. As the Supreme Court recently recognized in *Daimler*  
 11 *AG v. Bauman*, 134 S. Ct. 746, 760 (2014), “only a limited set of affiliations with a  
 12 forum will render a defendant amenable to all-purpose jurisdiction there.” The fact  
 13 that a corporation “engages in a substantial, continuous, and systematic course of  
 14 business” in the state is not enough. *Bauman*, at 760-61. The test does not focus on  
 15 a corporation’s in-forum contacts, but “calls for an appraisal of a corporation’s  
 16 activities in their entirety, nationwide and worldwide. A corporation that operates in  
 17 many places can scarcely be deemed at home in all of them.” *Id.* at n.20; *see also*  
 18 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2856 (2011)  
 19 (doing business in a state does not subject a corporation to a state’s general  
 20 jurisdiction); *see also Nationalleft, Inc. v. Checkgateway, LLC*, No. 12cv1498-WQH-  
 21 JMA, 2013 WL 593759, at \*6 (S.D. Cal. Feb. 15, 2013) (no general jurisdiction  
 22 over defendant that provided services to 1,000 California merchants to process  
 23 California transactions). General jurisdiction may only be asserted where the  
 24 corporation’s “affiliations with the State are so continuous and systematic as to  
 25 render them essentially at home in the forum State.” *Goodyear*, 131 S. Ct. at 2851  
 26 (citations omitted).

1       Two examples illustrate when corporations are “at home” in a state. In  
 2 *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), the only case where  
 3 the Supreme Court found general jurisdiction over a non-resident defendant, the  
 4 Supreme Court held that an Ohio court could assert general jurisdiction over a  
 5 defendant where the defendant’s president (1) maintained a home in Ohio; (2) ran a  
 6 corporate office in Ohio; (3) kept business files in Ohio; (4) handled corporate  
 7 correspondence in Ohio; (5) drew salaries from Ohio bank accounts; (6) distributed  
 8 paychecks from Ohio; and (7) held directors’ meetings in Ohio. *Id.* at 447-48.  
 9 Likewise, in *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163 (9th Cir. 2006),  
 10 the Ninth Circuit held that general jurisdiction existed in Washington over a North  
 11 Carolina company where defendant (1) had been licensed to do business in  
 12 Washington for over 60 years; (2) had advertised in purely local publications for  
 13 over 50 years; (3) maintained a permanent office in Washington; (4) maintained a  
 14 workforce in Washington; (5) engaged in Washington political activity; and (6)  
 15 commanded 29-31% of the Washington tobacco market share. *Id.* at 1167-68, 1175.

16       Unlike the defendants in *Perkins* and *Tuazon*, LeaseWeb USA is not “at  
 17 home” in California. For corporations, “the place of incorporation and principal  
 18 place of business are the paradigm bases for general jurisdiction.” *Bauman*, at 760  
 19 (internal quotations omitted). But LeaseWeb USA is incorporated in Delaware and  
 20 maintains its principal place of business in Virginia. Coerper Decl. ¶ 3. It has no  
 21 employees in California. *Id.* at ¶ 6. It has no offices in California. *Id.* It has no  
 22 bank accounts in California. *Id.* at ¶ 7. It has no designated agent for service of  
 23 process in California. Coerper Decl. ¶ 7. None of the allegedly infringing websites  
 24 hosted by LeaseWeb USA are hosted in California. *Id.* at ¶¶ 9, 10. None of the  
 25 owners of the allegedly infringing websites hosted by LeaseWeb USA are in  
 26 California. *Id.*<sup>3</sup> Thus, no general jurisdiction exists over LeaseWeb USA.

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27       <sup>3</sup> Nor can simply hosting a website accessible by California residents suffice to  
 28 support general jurisdiction. *See Mavrix Photo, Inc. v. Brand Technologies, Inc.*,

1                   2.     LeaseWeb USA Is Not Subject to Specific Jurisdiction

2                   The Court also does not have specific jurisdiction over LeaseWeb USA  
 3 because P10's claims do not arise out of any activity of LeaseWeb in California.  
 4 Specific jurisdiction exists only where "the cause of action arises out of or has a  
 5 substantial connection to the defendant's contacts with the forum." *Glencore Grain*  
 6 *Rotterdam B.V. v. Shivnath Rai Harnarian Co.*, 284 F.3d 1114, 1123 (9th Cir.  
 7 2002). The Ninth Circuit applies a three-prong test to determine if specific  
 8 jurisdiction exists:

9                   (1) The non-resident defendant must purposefully direct his activities, or  
 10                  consummate some transaction with the forum or resident thereof; or  
 11                  consummate some transaction with the forum or resident thereof; or perform  
 12                  some act by which he purposefully avails himself of the privilege of  
 13                  conducting activities in the forum, thereby invoking the benefits and  
 14                  protections of its laws; (2) the claim must be one which arises out of or relates  
 15                  to the defendant's forum related activities; and (3) the exercise of jurisdiction  
 16                  must comport with fair play and substantial justice, i.e. it must be reasonable.

17                  *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (quotation omitted).

18 Plaintiff bears the burden on the first two prongs. If plaintiff cannot establish the  
 19 first two prongs, as is the case here, the case must be dismissed. *Id.*

20 P10 cannot establish that LeaseWeb USA purposefully directed its activities  
 21 to California. For copyright infringement matters, courts apply a purposeful  
 22 direction analysis—namely, did defendant purposefully direct its activities toward  
 23 the Central District of California? *See, e.g., Adobe Systems, Inc. v. Trinity Software*  
*Distribution, Inc.*, No. C 12-1614 SI, 2012 WL 3763643, at \*5 (N.D. Cal. Aug. 29,  
 24 2012). Here, the Court should assess whether defendant (1) committed an

---

25  
 26  
 27                  647 F.3d 1218, 1227 (9th Cir. 2011) (providing a website in California does not  
 28 support general jurisdiction).

1 intentional act, which was (2) expressly aimed at the Central District of California;  
 2 and (3) caused harm, the brunt of which is suffered and which the defendant knows  
 3 is likely to be suffered in the Central District of California. *Calder v. Jones*, 465  
 4 U.S. 783 (1984). P10 cannot establish purposeful direction.

5 P10 bases its FAC entirely on an allegation that LeaseWeb USA provided  
 6 dedicated hosting services to three websites that allegedly contained infringing  
 7 images. This “intentional act” of providing dedicated hosting services was not  
 8 expressly aimed at the Central District of California. Instead, the customers  
 9 operating those websites were based in South America.<sup>4</sup> Coerper Decl. ¶ 9. The  
 10 websites are Spanish-language websites with an audience overwhelmingly from  
 11 South America. *See Coerper Decl. ¶ 10; Declaration of Anna Hsia in Support of*  
 12 *LeaseWeb USA, Inc.’s Motion to Dismiss ¶¶ 2-3 & Exs. 1-2.* As a passive  
 13 dedicated hosting provider, once LeaseWeb USA leases server space to a customer,  
 14 it is the customer (or the customer’s end users) who decides where data and content  
 15 are directed. Coerper Decl. ¶ 5; *see also Nobelbiz, Inc. v. Veracity Networks, LLC*,  
 16 13-CV-2518 YGR, 2013 WL 5425101, at \*3 (N.D. Cal. Sept. 27, 2013) (holding the  
 17 provision of internet services does not subject cable provider to personal jurisdiction  
 18 anywhere its customer’s activities can reach). Indeed, LeaseWeb USA cannot even  
 19 access any of its customer’s content without customer consent. Coerper Decl. ¶ 5.  
 20 Any actions by LeaseWeb USA’s customers or those customers’ users to avail  
 21 themselves of the California forum are nothing more than random and fortuitous  
 22 acts by third parties that do not, without more, establish specific personal  
 23 jurisdiction. *Nobelbiz*, 2013 WL 5425101, at \*3.

24 <sup>4</sup> There are also allegations that additional websites were hosted by foreign  
 25 LeaseWeb entities on servers in the United States that were not owned by  
 26 LeaseWeb USA. Even taking those allegations as true, they are not relevant to the  
 27 jurisdictional analysis, because “[c]orporations are treated as separate and distinct  
 28 entities and the ‘presence of one ... in a forum state may not be attributed to the  
 other’ for determining jurisdiction.” *Crystal Cruises, Inc. v. Moteurs Leroy-Somer S.A.*, 12-55338, 2013 WL 6068586, at \*1 (9th Cir. Nov. 19, 2013) (quoting *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007)).

1       For the same reasons, LeaseWeb USA could not have known that the alleged  
 2 harm would likely be suffered in the Central District of California. Its customers  
 3 were in South America. The content of the allegedly infringing websites was  
 4 directed to a South American audience. *C.f. Mavrix v. Brand Technologies*, 647  
 5 F.3d 1218, 1229-32 (9th Cir. 2011) (finding jurisdiction where website engaged in  
 6 copyright infringement to target consumers in California). LeaseWeb USA hosted  
 7 the websites in datacenters in Virginia. Coerper Decl. ¶ 9. As a passive dedicated  
 8 hosting provider, LeaseWeb USA did not control or even know of the content of the  
 9 websites. There is no indication here that LeaseWeb USA itself engaged in the  
 10 alleged *infringing activities* for commercial gain *in California*. Even if it did, there  
 11 is no allegation that LeaseWeb USA did so knowing it was infringing P10’s  
 12 copyrights and that P10 was in California. *Cf. Menken v. Emm*, 503 F.3d 1050,  
 13 1059 (9th Cir. 2007) (defendant expressly aimed conduct at forum where it knows a  
 14 resident of the forum state and engages in conduct directed at that individual).

15       P10 may argue that LeaseWeb USA’s use of passive, internet traffic routing  
 16 equipment in California supports jurisdiction. Not so.<sup>5</sup> The equipment is passive,  
 17 serves only to route traffic, and no LeaseWeb USA employees are present to operate  
 18 it. Coerper Decl. ¶¶ 6, 8.<sup>6</sup> None of the websites are hosted on any equipment in  
 19 California. *Id.* at ¶ 9. To hold otherwise would expand specific jurisdiction far  
 20 beyond the bounds of due process, as dedicated hosting providers like LeaseWeb  
 21 USA would be subject to jurisdiction in California for any site accessible to  
 22 California residents (or in any state were a site is accessible). It would also run  
 23 afoul of well-settled law providing that merely routing traffic is not copyright  
 24

25       <sup>5</sup> Even if it could, P10 bears the burden of proof that specific traffic resulting in the  
 26 infringement at issue in the complaint passed through this networking equipment.

27       <sup>6</sup> LeaseWeb is immune from liability based on routing internet traffic under 17  
 28 U.S.C. § 512(a), so it cannot form the basis of any allegations for copyright  
 infringement, and P10’s claims cannot “arise out of” that activity.

1 infringement, and the Ninth Circuit’s server test providing that infringement occurs  
 2 only where the server is located, not where plaintiff resides. *See Perfect 10, Inc. v.*  
 3 *Yandex N.V.*, No. C 12-01521 WHA, 2013 WL 4777189, \*4 (N.D. Cal. Sept. 6,  
 4 2013); *see also Perfect 10, Inc. v. Google, Inc.*, No. CV 04-9484 AHM (SHx), 2010  
 5 WL 9479060, \*6 (C.D. Cal. July 30, 2010) (noting the “server test is now binding  
 6 Ninth Circuit precedent”). P10’s claims arise from LeaseWeb USA’s conduct in  
 7 Virginia, not California.

8 Similarly, P10 cannot base jurisdiction on vague allegations of conduct by  
 9 “hundreds of third-party websites based in California including Google.com,  
 10 Yahoo.com, and Blekko.com” which may display images from websites hosted on  
 11 LeaseWeb USA servers. FAC ¶ 6.6. If such vague and unsupported allegations  
 12 supported jurisdiction, every website would be subject to jurisdiction in California  
 13 when Google, Yahoo, or many large, search engines crawled its data. This would be  
 14 especially incongruous because search engines like Google and Yahoo themselves  
 15 do not infringe copyrights when they crawl the web and develop search results. *See,*  
 16 *e.g., Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007).<sup>7</sup> And P10  
 17 provides no detail on how LeaseWeb USA could be subject to jurisdiction based on  
 18 random, fortuitous actions taken by third party websites.

19 Finally, exercising personal jurisdiction over LeaseWeb USA would offend  
 20 notions of fair play and substantial justice. The case involves allegations against a  
 21 Virginia-based defendant who passively provides dedicated hosting services to

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22  
 23 <sup>7</sup> Likewise, merely using a payment system such as Visa or Paypal that is located  
 24 in California is insufficient to establish jurisdiction over a party. To hold  
 25 otherwise would practically subject nearly every merchant in the United States  
 26 (and abroad) to jurisdiction where those companies are located. FAC ¶ 6.9; *see,*  
 27 *e.g., Resolution Trust Corp. v. First of Am. Bank*, 796 F. Supp. 1333, 1336 (C.D.  
 28 Cal. 1992) (membership in national clearinghouse service for payments and  
 transactions with California bank did not subject Michigan company to jurisdiction  
 in California)

1 foreign third parties located overseas. In addition to the jurisdiction issues, given  
 2 that witnesses and evidence would exist largely in Virginia (or South America), the  
 3 Central District of California is also not a reasonable forum. It is not reasonable to  
 4 hale LeaseWeb USA into a California court.

5 **B. Legal Standard For Motion to Dismiss For Failure to State a  
 6 Claim**

7 “To survive a motion to dismiss, a complaint must contain sufficient factual  
 8 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
 9 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550  
 10 U.S. 544, 570 (2007)). Facial plausibility requires factual allegations sufficient to  
 11 “draw the reasonable inference that the defendant is liable for the misconduct  
 12 alleged.” *Id.* Labels, conclusions and “formulaic recitation[s]” will not suffice.  
 13 *Twombly*, 550 U.S. at 555. Nor will facts merely consistent with defendant’s liability.  
 14 *Iqbal*, 556 U.S. at 679. “Where the well-pleaded facts do not permit the court to infer  
 15 more than the mere possibility of misconduct, the complaint has alleged—but it has  
 16 not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* In analyzing a complaint,  
 17 “courts may infer from the factual allegations in the complaint ‘obvious alternative  
 18 explanation[s]’ which suggest lawful conduct rather than the unlawful conduct the  
 19 plaintiff would ask the court to infer.” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d  
 20 1283, 1290 (11th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679).

21 **1. All Claims Based on Allegedly Infringing Material Hosted  
 22 on Foreign Servers Should be Dismissed with Prejudice**

23 Because United States copyright laws have no extraterritorial reach, all claims  
 24 against LeaseWeb USA that P10 asserts based on images hosted on foreign servers  
 25 provided by other defendants must be dismissed with prejudice. Courts in the Ninth  
 26 Circuit apply the “server test,” which provides that the hosting website’s computer is  
 27 the situs of direct copyright infringement. *Amazon.com*, 508 F.3d at 1159; *Yandex*,  
 28

1 2013 WL 4777189 at \*4. Courts may not enforce United States copyright laws on  
 2 foreign defendants who host images on servers located outside of the United States.  
 3 *See Yandex*, 2013 WL 4777189 at \*4; *see also Google*, 2010 WL 9479060 at \*6  
 4 (“[Perfect 10] argues unconvincingly that this Court . . . should revise the server test  
 5 for direct infringement, based upon new evidence of so-called massive infringing  
 6 websites. The server test is now binding Ninth Circuit precedent, and it is not within  
 7 this Court’s power to revise it.”).

8 P10 alleges that foreign “servers located in Germany or the Netherlands” host  
 9 “at least eleven” sites that infringe P10’s copyrighted images. FAC ¶ 32. Under the  
 10 server test, the situs of the infringement lies in “Germany or the Netherlands,” and the  
 11 United States copyright laws simply do not apply. The *Yandex* case is instructive.  
 12 There, P10 sued a family of companies operating under the “Yandex” brand. *Yandex*,  
 13 2013 WL 4777189, at \*4. P10 based its direct infringement claims on 1,474 user-  
 14 uploaded P10 images hosted on Yandex’s servers, all of which were in Russia. *Id* at  
 15 \*4. Rejecting P10’s claims, Judge Alsup of the Northern District of California held  
 16 that images hosted on servers in Russia were “extraterritorial and not actionable under  
 17 the [Copyright] Act.” *Id*.

18 So too here. At least eleven sites identified were hosted on servers outside the  
 19 United States. FAC ¶ 32. There can be no liability under the U.S. Copyright Act for  
 20 images hosted on those servers. And because there can be no liability for the foreign  
 21 entities hosting those images, there can be no liability for LeaseWeb USA under any  
 22 theory. *See A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 n.2 (9th Cir.  
 23 2001) (“Secondary liability for copyright infringement does not exist in the absence of  
 24 direct infringement by a third party.”); *see also Flava Works, Inc. v. Gunter*, No. 10 C  
 25 6517, 2012 WL 6215627, \*4 (N.D. Ill. Dec. 13, 2012) (holding LeaseWeb USA was  
 26 not subject to jurisdiction for claims related to videos on sites hosted on equipment  
 27 belonging to LeaseWeb Netherlands.).

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2. The Direct Infringement Claim Must be Dismissed Because P10 Has Not Alleged Volitional Conduct

P10 fails to state a claim for direct infringement because it has not and cannot allege volitional conduct. To state a claim for direct copyright infringement, P10 must allege that: (1) it owns the copyright for the allegedly infringed materials; and (2) that LeaseWeb USA violated at least one exclusive right granted to copyright holders under 17 U.S.C. § 106. *Napster*, 239 F.3d at 1013. Merely “operating a system used to make copies at the user’s command does not mean that the system operator, rather than the user, caused copies to be made.” *Fox Broadcasting Co., Inc. v. Dish Network LLC*, No. 12-57048, --- F.3d ---, 2014 WL 260572, at \*5 (9th Cir. Jan. 24, 2014). Rather, plaintiff must allege “copying by the defendant.” *Id.* Without allegations of volitional conduct by LeaseWeb USA, P10’s direct infringement claims must be dismissed. *See Parker v. Google, Inc.*, 422 F. Supp. 2d 492, 497 (E.D. Pa. 2006) (direct infringement requires “some element of volition or causation” by a defendant); *Costar Group v. LoopNet, Inc.*, 373 F.3d 544, 550 (4th Cir. 2004); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV11-07098 AHM (SHx), 2013 WL 2109963, at \*6-9 (C.D. Cal. Mar. 8, 2013) (discussing volitional conduct requirement).<sup>8</sup>

P10 rests its direct infringement claim on LeaseWeb USA’s mere provision of dedicated hosting services to third-party websites allegedly displaying P10’s images. But dedicated hosting providers like LeaseWeb USA are passive conduits, and are not liable for direct copyright infringement.<sup>9</sup> Rather, liability attaches only where the defendant *causes*—i.e., committed—the infringement. *See, e.g., Fox Broadcasting*, 2014 WL 260572, at \*5; *LoopNet*, 373 F.3d at 550 (“an ISP who owns an electronic

<sup>8</sup> The FAC uses the word “volitional” repeatedly, but those allegations are nothing more than conclusory recitations of the elements of a copyright claim, and are insufficient under *Iqbal* and *Twombly*.

<sup>9</sup> To the extent P10 attempts to allege that LeaseWeb USA is liable merely because it routes traffic for infringing websites, it is entitled to a defense under the DMCA, 17 U.S.C. § 512(a) & (b).

1 facility that responds automatically to users' input is not a direct infringer"); *see also*  
 2 *Fox Broadcasting Co., Inc. v. Dish Network, L.C.C.*, 905 F. Supp. 2d 1088, 1102  
 3 (C.D. Cal. 2012) (applying *LoopNet*).

4 The Fourth Circuit's decision in *LoopNet*, applied favorably by courts in this  
 5 district, is instructive. LoopNet was an ISP that operated a website allowing  
 6 subscribers to post commercial real estate listings on the Internet. *Id.* at 547.  
 7 LoopNet users could display real estate on LoopNet's website, [loopnet.com](http://loopnet.com). Plaintiff  
 8 sued for direct infringement, alleging the LoopNet website contained copyrighted  
 9 images. Rejecting this theory, the Fourth Circuit held that as an ISP, LoopNet was  
 10 analogous to a traditional copy machine and could not be liable for direct  
 11 infringement. And where a user makes illegal copies using a machine, this does not  
 12 make the owner of the copy machine a direct infringer.<sup>10</sup> Because LoopNet undertook  
 13 no volitional conduct in infringing plaintiff's images, LoopNet could not be held  
 14 liable for direct copyright infringement.<sup>11</sup>

15 Even more so here. P10 alleges no volitional conduct by LeaseWeb USA. In  
 16 fact, P10 alleges the opposite. P10 alleges that LeaseWeb USA provided dedicated  
 17 hosting services for three third-party websites that allegedly displayed P10's images.  
 18 The FAC disclaims any affirmative conduct by LeaseWeb USA to directly infringe  
 19

---

20 <sup>10</sup> The Fourth Circuit further noted the existence of:

21 Thousands of owners, contractors, servers, and users involved in the  
 22 Internet whose role involves the storage and transmission of data in the  
 23 establishment and maintenance of an Internet facility. Yet their conduct is  
 24 not truly "copying" as understood by the Act; rather they are conduits  
 25 from or to would-be copiers and have no interest in the copy itself.

26 *Id.* at 551. P10's FAC constitutes an attempt to impose liability on any entity on the  
 27 Internet chain; imposition of such liability would stymie innovation and dramatically  
 28 alter the fundamental purpose of federal copyright laws.

29 <sup>11</sup> This decision is especially relevant here, because the Fourth Circuit would be the  
 30 controlling law if P10 had sued LeaseWeb USA in Virginia where the sites were  
 31 hosted. Indeed, P10 may try to establish jurisdiction in California instead of suing  
 32 LeaseWeb in Virginia to avoid this controlling case law.

1 P10's images. In *LoopNet*, the Fourth Circuit held that no direct infringement could  
 2 attach for LoopNet users displaying infringing images on LoopNet's website. P10  
 3 asks this Court to ignore *LoopNet*, which is controlling law in LeaseWeb USA's home  
 4 jurisdiction, and attach direct liability based on an even more tenuous relationship for  
 5 allegedly infringing images posted not on LeaseWeb USA's own website, but on  
 6 some third-party websites for which LeaseWeb USA passively provides dedicated  
 7 hosting services. Because P10 has not and cannot allege that LeaseWeb USA engaged  
 8 in conduct that *caused* the infringement, the direct infringement claim should be  
 9 dismissed with prejudice.

10       3.    P10's Contributory Infringement Claim Must Be Dismissed  
 11                   Because It Has Not Adequately Alleged Third-Party Direct  
 12                   Infringement, Knowledge by LeaseWeb USA, or Sufficient  
 13                   Contribution by LeaseWeb USA to the Infringement

14       To state a claim for contributory liability, P10 must allege that LeaseWeb USA  
 15 "infringe[d] contributorily by intentionally inducing or encouraging direct  
 16 infringement" by a third party. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005). Notwithstanding the Supreme Court's definition, the  
 17 Ninth Circuit expanded the scope of contributory infringement, finding its existence  
 18 where defendant "(1) knew of the direct infringement; and (2) ... either induced,  
 19 caused, or materially contributed to the infringing conduct." *Luvdarts, LLC v. AT&T Mobility, LLC*, 710 F.3d 1068, 1072 (9th Cir. 2013) (quoting *Napster*, 239 F.3d at  
 20 1019).<sup>12</sup> P10 fails to adequately allege any direct infringement by a relevant third  
 21 party, or that LeaseWeb USA knew of such direct infringement and induced, caused,  
 22 or materially contributed to it.

23  
 24  
 25  
 26       <sup>12</sup> Despite the Supreme Court's holding defining the scope of contributory  
 27 infringement in *Grokster*, the Ninth Circuit has taken a more expansive view of what  
 28 constitutes contributory infringement. In any event, P10's FAC fails to allege  
 adequately the elements of either definition.

a) *P10 Fails to Allege Direct Infringement by a Third Party*

P10 has not adequately alleged infringement by a third party and without direct infringement by some third party, there can be no contributory infringement. *Napster*, 239 F.3d at 1013 n.2 (“[s]econdary liability for copyright infringement does not exist absent direct infringement by a third party.”). P10 only alleges “on information and belief,” that LeaseWeb USA provides dedicated hosting services to three websites that infringe P10’s images. FAC ¶ 30. But P10 alleges no facts to support the conclusory statement that these websites are direct infringers. P10 does not allege (1) which website directly infringed on which copyrighted images; (2) when such infringement occurred; or (3) whether the websites hosted by LeaseWeb USA were the direct infringers or whether their users were direct infringers.<sup>13</sup> P10’s contributory infringement claim relies on an allegation that the websites LeaseWeb USA hosted were *direct* infringers of P10’s images. Without the crucial factual allegations identified above, P10’s claims do not rise to the level of plausibility, as they merely recite the elements of a contributory infringement claim. *See, e.g., Terraspan, LLC v. Rave, LLC*, No. 3:12-CV00816-K, 2012 WL 6115721, at \*5-6 (N.D. Tex. Dec. 10, 2012) (dismissing copyright infringement claims based on information and belief); *see also Moses v. Youtube, Inc.*, No. 12-2822-JPM-dkv, 2014 WL 549205, at \*3 (W.D. Tenn. Feb. 11, 2014) (dismissing direct infringement claims where plaintiff did not allege sufficient facts to make the claim plausible); *United States v. Ctr. For Diagnostic Imaging, Inc.*, 787 F. Supp. 2d 1213, 1221 (W.D. Wash. 2011) (“plaintiff relying on ‘information and belief’ must state the factual basis for the belief.”). And without plausible allegations of direct infringement by the websites for which LeaseWeb USA provided dedicated hosting services, the contributory infringement

<sup>13</sup> Many third-party websites, for example, are “user-generated content” sites. Allegedly infringing images on these sites are typically uploaded by the websites’ users, not the website itself.

claim must be dismissed.

*b) Plaintiff Fails to Allege Actual Knowledge of Infringement*

In the Ninth Circuit, “a computer system operator can be held contributorily liable if it has *actual* knowledge that *specific* infringing material is available using its system and can take simple measures to prevent further damage to copyrighted work, yet continues to provide access to infringing works.” *Amazon.com*, 508 F.3d at 1172 (emphasis in original) (citations omitted). P10 fails to allege that LeaseWeb USA had actual knowledge of direct infringement by the websites for which it provided dedicated hosting services. First, as discussed above, P10 has not adequately alleged whether the websites were the actual direct infringers. Second, P10 does not adequately allege it provided LeaseWeb USA with sufficient notice to confer actual knowledge. P10 alleges it sent DMCA notices, but alleges only that the notices “identified at least 12,220 infringing Perfect 10 images that the LeaseWeb Defendants are making available for viewing and copying, to millions of users.” FAC ¶ 34. For DMCA notices to confer actual knowledge, however, they must describe “which of these titles were infringed, who infringed them, and when the infringement occurred.” *Luvdarts*, 710 F.3d at 1073. P10’s failure to allege it provided specific information to LeaseWeb USA requires dismissal of its contributory infringement claim.

c) *Plaintiff Fails to Allege that LeaseWeb USA Induced, Caused or Materially Contributed to the Infringing Conduct*

Contributory liability also requires the plaintiff to allege “culpable intent” and an “unlawful objective” by the defendant. *See Grokster*, 545 U.S. at 934-40. P10 does not even try to allege facts supporting an inference that LeaseWeb USA acted with culpable intent or an unlawful objective. It alleges the opposite—that LeaseWeb USA neutrally provided dedicated hosting services. That alone supports dismissal of

1 the contributory infringement claim. Even if this Court applied the Ninth Circuit's  
 2 more expansive definition of contributory liability, however, P10's allegations fail  
 3 because it has not adequately alleged that LeaseWeb USA "induced, caused, or  
 4 materially contributed to the infringing conduct."

5 P10 has not alleged that LeaseWeb USA induced infringing conduct. The  
 6 inducement theory requires that P10 adequately allege that (1) LeaseWeb USA  
 7 distributed a device or product; (2) there were acts of infringement; (3) LeaseWeb  
 8 USA's objective promoted its product for copyright infringement; and (4) causation.  
 9 *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir. 2013). P10  
 10 must also allege the acts of infringement were committed by the "recipients of the  
 11 device." *Grokster*, 545 U.S. at 940. Here, the FAC fails to allege facts supporting  
 12 elements 2-4 of the inducement theory. P10 alleges only that LeaseWeb USA  
 13 provided back-end dedicated hosting services for other websites that contain P10's  
 14 images. P10 does not adequately allege that the recipients of LeaseWeb USA's  
 15 dedicated hosting services directly infringed on P10's images. P10 instead artfully  
 16 alleges that the websites contained P10's images, omitting information about whether  
 17 those websites were the direct infringers (or whether users of those websites directly  
 18 infringed). Nor does P10 allege that LeaseWeb USA distributed its dedicated hosting  
 19 services with an "object of promoting its use to infringe copyright." The only  
 20 plausible reading of the FAC reveals the opposite—that LeaseWeb USA only  
 21 neutrally provided dedicated hosting services and never promoted its services for  
 22 copyright infringement. Finally, nowhere has P10 alleged that LeaseWeb USA  
 23 promoted its services for copyright infringement and caused P10's damages. P10 fails  
 24 to allege—and cannot plausibly allege—that LeaseWeb USA is liable under an  
 25 inducement theory of contributory infringement.

26 P10 also has not alleged that LeaseWeb USA "caused" the direct infringement.  
 27 P10 alleges only that LeaseWeb USA hosted websites that displayed P10's images.  
 28

1 Nowhere does P10 allege facts that support an inference that LeaseWeb USA tried to  
 2 “cause” any individual or entity to post P10’s images on the third-party websites. P10  
 3 does not even identify the entity that posted the images, much less allege facts  
 4 supporting how LeaseWeb USA’s provision of dedicated hosting services “caused”  
 5 that entity to upload the infringing images. P10 fails to allege a contributory  
 6 infringement claim based on causation.

7 Nor has P10 alleged that LeaseWeb USA “materially contributed” to the direct  
 8 infringement. “To have materially contributed to copyright infringement, the . . .  
 9 assistance must bear *some direct relationship to the infringing acts.*” *Perfect 10, Inc.*  
 10 *v. Visa Int’l Serv. Assoc.*, No. C 04-00371 JW, 2004 WL 3217732, at \*2 (N.D. Cal.  
 11 Dec. 3, 2004) (citations omitted). P10 will likely argue that LeaseWeb USA  
 12 materially contributed to the direct infringement by not acting after receiving P10’s  
 13 notices of infringement. Not so. The FAC does not allege that the notices provided  
 14 sufficient facts to confer actual knowledge to LeaseWeb USA of direct infringement  
 15 by LeaseWeb USA’s customers, nor are the notices attached to the FAC.

16 *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936 (9th Cir.  
 17 2011) does not save P10’s contributory infringement claim. To the contrary, *Akanoc*  
 18 also supports dismissal, because LeaseWeb USA has only a tertiary relationship (at  
 19 best) with any alleged direct infringers, much like the defendant in *Akanoc* for the  
 20 claims the Ninth Circuit dismissed. In *Akanoc*, the Ninth Circuit considered whether  
 21 two dedicated hosting businesses were liable for contributory infringement. One  
 22 business, MSG, leased servers, bandwidth, and IP addresses to Akanoc. Akanoc  
 23 provided dedicated hosting services to “the customers who directly infringed the  
 24 trademarks and copyrights.” *Id.* at 940. Louis Vuitton sent notices of infringement to  
 25 both MSG and Akanoc, but received no response. The Ninth Circuit affirmed the  
 26 district court’s finding there was no evidence of contributory infringement by MSG,  
 27 because the direct infringers could not be “construed as MSG’s customers.” *Id.* at  
 28

1 942. Here, P10 alleges only that LeaseWeb USA hosted other websites where P10  
 2 allegedly found its images, but nowhere does P10 allege facts sufficient to show those  
 3 websites were the direct infringers (as opposed to themselves being contributorily  
 4 liable for user-uploaded content). Because the FAC lacks factual allegations that  
 5 support an inference that LeaseWeb USA provided services to the *direct* infringers,  
 6 P10 fails to adequately allege that any “material contribution” from LeaseWeb USA  
 7 bore a “direct relationship” to the infringing acts. P10’s contributory infringement  
 8 claim based on material contribution fails as a matter of law.

9 **IV. CONCLUSION**

10 Perfect 10’s claims against LeaseWeb USA should be dismissed with prejudice  
 11 under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

12  
 13 DATED: March 28, 2014

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14  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2014, I electronically filed the foregoing  
**DEFENDANT LEASEWEB USA, INC.'S NOTICE OF MOTION AND**  
**MOTION TO DISMISS FIRST AMENDED COMPLAINT** with the Clerk of the  
Court using the CM/ECF system, which sent notification of such filing to the  
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# **EXHIBIT I**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 14-808-JFW (VBKx)**

Date: April 28, 2014

Title: Perfect 10, Inc. -v- Ocom B.V. et al.

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**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**Shannon Reilly  
Courtroom Deputy**

**None Present  
Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**

None

**ATTORNEYS PRESENT FOR DEFENDANTS:**

None

**PROCEEDINGS (IN CHAMBERS):**

**ORDER DENYING DEFENDANT LEASEWEB USA,  
INC.'S MOTION TO DISMISS FIRST AMENDED  
COMPLAINT [filed 3/28/2014; Docket No. 17]**

On March 28, 2014, Defendant LeaseWeb USA, Inc. ("LeaseWeb USA") filed a Motion to Dismiss First Amended Complaint. On April 7, 2014, Plaintiff Perfect 10, Inc. ("Plaintiff" or "Perfect 10") filed its Opposition. On April 14, 2014, LeaseWeb USA filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's April 28, 2014 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Perfect 10 is a California corporation having its principal place of business in Los Angeles County. It designs, creates, produces, markets, promotes, and sells copyrighted adult entertainment products. It operated the well-known magazine *Perfect 10*, which it allegedly closed because of "rampant infringement." Perfect 10 currently operates perfect10.com, a subscription-based website which provides access to Perfect 10's copyrighted content.

LeaseWeb USA is a Delaware corporation, with its headquarters and principal place of business located in Manassas, Virginia.<sup>1</sup> LeaseWeb USA is an internet hosting service provider which provides dedicated servers and internet connectivity to its customers. A LeaseWeb USA

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<sup>1</sup>LeaseWeb USA along with Defendants LeaseWeb Netherlands B.V. and LeaseWeb Deutschland GmbH are subsidiaries of Defendant Ocom B.V.

customer may host its own website on a server it leases from LeaseWeb USA, or it may act as a reseller of hosting services and “sub lease” that server space to others. LeaseWeb USA’s only server facility or data center which hosts customer’s websites is located in Manassas, Virginia. Although it does not own a server facility in California, it owns some networking equipment in the San Francisco area.

The [leaseweb.com](http://leaseweb.com) website, which is jointly used by Defendants Ocom B.V., LeaseWeb Netherlands B.V., LeaseWeb Deutschland GmbH, and LeaseWeb USA, states that LeaseWeb is “one of the largest hosting providers in the world” and advertises that its network is connected with “internet exchanges” in Los Angeles and Palo Alto, among other locations. The parties have not presented any evidence that demonstrates how many of LeaseWeb USA’s customers are California residents.

LeaseWeb USA does not have a mailing address or office in California. It has never had any employees or bank accounts in California and has never paid taxes in California. At the time Perfect 10 filed this action, LeaseWeb USA was not registered to do business in California and did not have an agent for service of process in California. However, on March 12, 2014, after this action was filed, LeaseWeb USA designated an agent for service of process in California.

In its First Amended Complaint filed on March 4, 2014, Perfect 10 alleges that LeaseWeb USA and Defendants Ocom B.V., LeaseWeb Netherlands B.V., and LeaseWeb Deutschland GmbH (collectively “LeaseWeb”) provided dedicated hosting services to websites that infringe Perfect 10’s copyrighted works. More specifically, Perfect 10 alleges that LeaseWeb USA provides hosting services to the following infringing websites: [poringa.net](http://poringa.net), [ultraforos.com](http://ultraforos.com), [ultraforos.net](http://ultraforos.net), and [imgbox.com](http://imgbox.com).<sup>2</sup> At least one of those websites, [imgbox.com](http://imgbox.com), is operated in California.

Between February 2013 and the present, Perfect 10 has sent at least 22 DMCA notices to abuse@leaseweb.com, which identified approximately 12,220 images that it claims infringed Perfect 10’s copyrights. According to Perfect 10, LeaseWeb USA and its affiliates have refused to “process” those DMCA notices and failed to take any action to remove the infringing images. Those DMCA notices were signed by Dr. Norm Zada, the President of Perfect 10, and identified a

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<sup>2</sup>LeaseWeb USA argues that the Court should disregard Perfect 10’s evidence related to California website [imgbox.com](http://imgbox.com) because it is not specifically referred to in the First Amended Complaint. See Reply at p. 2 (“P10’s arguments regarding ‘imgbox.com’ . . . are irrelevant, as that website does not even appear in the FAC and has no bearing on a specific jurisdiction analysis.”). However, Plaintiff made it clear in its First Amended Complaint that it was not limiting its claims solely to the websites listed in its First Amended Complaint. See First Amended Complaint at ¶ 30 (stating “LeaseWeb Defendants currently host *at least* eight websites on their servers located in Manassas, Virginia that infringe Perfect 10’s Copyrighted Works” and in describing those websites alleges that “[t]hese websites include, *without limitation* . . .”) (emphasis added). Moreover, according to the Declaration of Dr. Norman Zada in support of Perfect 10’s Opposition, at least one of the 22 DMCA notices referred to in the First Amended Complaint identified the website [imgbox.com](http://imgbox.com) as infringing Perfect 10’s copyrights. Accordingly, the Court will consider Perfect 10’s evidence related to [imgbox.com](http://imgbox.com).

California mailing address in Beverly Hills, CA.

In its First Amended Complaint, Plaintiff alleges one claim for relief for copyright infringement against Defendants LeaseWeb USA, Ocom B.V., LeaseWeb Netherlands B.V., and LeaseWeb Deutschland GmbH. Perfect 10 has only served LeaseWeb USA and has not yet served its foreign affiliates. LeaseWeb USA moves to dismiss the First Amended Complaint for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2) and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

## II. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

### A. Procedural Considerations

Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Court may decide a question of personal jurisdiction on the basis of affidavits and documentary evidence submitted by the parties, or may hold an evidentiary hearing on the matter. See 5A Wright & Miller, *Federal Practice and Procedure*, § 1351, at pp. 253-59 and n. 31-35 (2d ed. 1990); *Rose v. Granite City Police Dept.*, 813 F. Supp. 319, 321 (E.D. Pa. 1993). Whichever procedure is used, plaintiff bears the burden of establishing that jurisdiction is proper. See, e.g., *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011).

When the Court does not hold an evidentiary hearing and instead relies on written materials, the plaintiff need only make a *prima facie* showing of personal jurisdiction to survive a motion to dismiss. *Id.* at 1223. All allegations in the plaintiff's complaint must be taken as true, to the extent not controverted by the defendant's evidence, and all conflicts in the evidence must be resolved in the plaintiff's favor. *AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (citing *WNS, Inc. v. Farrow*, 884 F.2d 200, 203 (5th Cir. 1989)).

### B. Substantive Standard

Because there is no applicable federal statute governing personal jurisdiction in this case, the Court applies the law of California. See, e.g., *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). California's long-arm statute extends jurisdiction to the limits of constitutional due process. See *Gordy v. Daily News, L.P.*, 95 F.3d 829, 831 (9th Cir. 1996); Cal. Code. Civ. Proc. § 410.10 ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States"). Therefore, the Court must determine whether the requirements of due process are satisfied by the Court's exercise of personal jurisdiction over LeaseWeb USA.

The Fourteenth Amendment's Due Process Clause only permits courts to exercise personal jurisdiction over a defendant who has sufficient "minimum contacts" with the forum state such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). There are two recognized bases for personal jurisdiction over nonresident defendants: (1) "general jurisdiction," which arises where the defendant's activities in the forum state are sufficiently "substantial" or "continuous and systematic" to justify the exercise of jurisdiction over him or it in all matters; and (2) "specific jurisdiction," which arises when a defendant's specific contacts with the forum have given rise to

the claim in question. See *Helicopteros Nacionales de Columbia S.A. v. Hall*, 466 U.S. 408, 414-16 (1984); *Doe v. American Nat'l Red Cross*, 112 F.3d 1048, 1050-51 (9th Cir. 1997).

In this case, Perfect 10 concedes that the Court does not have general jurisdiction over LeaseWeb USA, and instead contends that LeaseWeb USA's contacts with California are sufficient to establish specific jurisdiction. Accordingly, the Court focuses on specific jurisdiction. The Ninth Circuit has developed a three-part test for assessing the exercise of specific personal jurisdiction over a party:

- (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

*Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (2004); see also *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). "The plaintiff bears the burden of satisfying the first two prongs of the test. . . . If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable." *Schwarzenegger*, 374 F.3d at 802 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

### C. Personal Jurisdiction Analysis

#### 1. LeaseWeb USA purposefully directed its activities toward California.

In order to meet the first prong of the specific jurisdiction test, Perfect 10 must establish that LeaseWeb USA either purposefully availed itself of the privilege of conducting activities in California, or purposefully directed its activities toward California. *Schwarzenegger*, 374 F.3d at 802. This first prong "ensures that a nonresident defendant will not be haled into court based upon 'random, fortuitous or attenuated' contacts with the forum state." *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998) (citations omitted). The first prong refers to both "purposeful direction" and "purposeful availment," which are "distinct concepts." *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011); *Schwarzenegger*, 374 F.3d at 802. In cases involving tortious conduct, courts generally apply a purposeful direction analysis. *Mavrix Photo, Inc.*, 647 F.3d at 1228. Because Perfect 10 "has alleged copyright infringement, a tort-like cause of action, purposeful direction is the proper analytical framework." *Id.* (quotations and citations omitted).

In order to determine whether a non-resident defendant purposefully directed its activities toward California, the Ninth Circuit applies its "effects" test, which it crafted based on the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984). To satisfy this test, the defendant must

have: "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger*, 374 F.3d at 803 (quotations and citations omitted). Although the Ninth Circuit commonly refers to this test as the *Calder* "effects" test, the Ninth Circuit has "warned courts not to focus too narrowly on the test's third prong -- the effects prong -- holding that 'something more' is needed in addition to a mere foreseeable effect." *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006) (citation omitted). The Ninth Circuit has concluded that "something more" is what the Supreme Court described as 'express aiming' at the forum state." *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000).

The Court concludes that Perfect 10 has made a *prima facie* showing that LeaseWeb USA purposefully directed its activities toward California, i.e. committed an intentional act, expressly aimed at California, causing harm that the LeaseWeb USA knew was likely to be suffered in California. LeaseWeb USA provided its hosting services to at least one website operated in California, and continued to provide those hosting services to that California customer, even after it acquired actual knowledge that its California customer was allegedly infringing a California company's copyrights.<sup>3</sup> These contacts alone are sufficient to establish purposeful direction and express aiming at the forum state. See *Mavrix*, 647 F.3d at 1229 ("[W]e find most salient the fact that Brand used Mavrix's copyrighted photos as part of its exploitation of the California market for its own commercial gain."); *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir. 2012) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) ("We have repeatedly stated that the 'express aiming' requirement is satisfied, and specific jurisdiction exists, 'when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state.'")); *id.* at 678 (finding that defendant's intentional acts were expressly aimed at the copyright held by the plaintiff because the plaintiff knew that its intentional acts would impact plaintiff's copyright by virtue of the cease-and-desist letter it had received).

Although these contacts are more than sufficient to establish that LeaseWeb USA purposefully directed and expressly aimed its activities toward California, they are not LeaseWeb

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<sup>3</sup>The Court notes that the Ninth Circuit does not require that the intentional act itself be tortious or wrongful. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207-1208 (9th Cir. 2006) ("In any personal jurisdiction case we must evaluate all of a defendant's contacts with the forum state, whether or not those contacts involve wrongful activity by the defendant. Many cases in which the *Calder* effects test is used will indeed involve wrongful conduct by the defendant. But we do not read *Calder* necessarily to require in purposeful direction cases that all (or even any) jurisdictionally relevant effects have been caused by wrongful acts. We do not see how we could do so, for if an allegedly wrongful act were the basis for jurisdiction, a holding on the merits that an act was not wrongful would deprive the court of jurisdiction."). Accordingly, it is unnecessary to determine whether the conduct in this case was tortious or wrongful. However, the act of providing hosting services to a customer, and continuing to do so after discovering that the customer is allegedly infringing a plaintiff's copyrights, may constitute a wrongful or tortious act that would be sufficient to support a claim for contributory copyright infringement. See *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 943 (9th Cir. 2011).

USA's only contacts with California. LeaseWeb USA has attempted to solicit California customers by publicly promoting and marketing its network infrastructure and connectivity in California via its website, and, at a minimum, has entered the California marketplace. See *Mavrix*, 647 F.3d at 1231 ("[W]here, as here, a website with national viewership and scope appeals to, and profits from, an audience in a particular state, the site's operators can be said to have expressly 'aimed' at that state."). In light of these contacts, there can be no serious claim or concern that LeaseWeb USA is being haled into a distant forum based upon "random, fortuitous or attenuated" contacts.

Moreover, in considering the third element of the *Calder* effects test, the Court concludes that LeaseWeb USA certainly knew or should have known that its intentional acts would likely cause harm in California. Indeed, "[t]he economic loss caused by the intentional infringement of a plaintiff's copyright is foreseeable." *Mavrix Photo, Inc.*, 537 F.3d at 1231. "In determining the situs of a corporation's injury, '[o]ur precedents recognize that in appropriate circumstances a corporation can suffer economic harm both where the bad acts occurred and where the corporation has its principal place of business.'" *Id.* (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1113 (9th Cir. 2002)). LeaseWeb USA knew or should have known that Perfect 10 would suffer economic harm in California, when it refused to process DMCA notices reflecting a California mailing address.

Accordingly, the Court concludes that Perfect 10 has established that LeaseWeb USA purposefully directed its activities toward California.

## 2. Arising out of or relating to LeaseWeb USA's forum related activities

Based on the evidence, the Court also concludes that Perfect 10's has made a *prima facie* showing of the second prong of the specific jurisdiction test, i.e. its claim for copyright infringement arises out of or relates to LeaseWeb USA's forum-related activities. The Ninth Circuit has adopted a "but for" test in assessing whether a plaintiff's claim arises out of or relates to a defendant's forum related activities. See, e.g., *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). In other words, a court "must determine if the [plaintiff] would not have been injured 'but for' the [defendant's] conduct directed toward [plaintiff] in California." *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). The Court easily concludes, that "but for" Lease WebUSA's provision of hosting services to infringers of Perfect 10's copyrights, at least one of which is based in California, and "but for" its alleged refusal to process Perfect 10's DMCA notices, Perfect 10 would not have been injured.

## 3. Fair Play and Substantial Justice

Because Perfect 10 has satisfied the first two prongs of the specific jurisdiction test, the burden then shifts to LeaseWeb USA to "present a compelling case" that the exercise of jurisdiction would not be reasonable. *Schwarzenegger*, 374 F.3d at 802 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)). This third "reasonableness" prong is satisfied when the following factors weigh in favor of the exercise of jurisdiction over a nonresident defendant:

- (1) The extent of purposeful interjection into the forum state;
- (2) The burden on the defendant of defending in the forum;

- (3) The extent of conflict with the sovereignty of defendant's state;
- (4) The forum state's interest in adjudicating the dispute;
- (5) The most efficient judicial resolution of the controversy;
- (6) The importance of the forum to the plaintiff's interest in convenient and effective relief; and
- (7) The existence of an alternative forum.

*Fed. Deposit Ins. Corp. v. British-American Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987) (citing *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986)). Although it was LeaseWeb USA's burden to present a compelling case that the exercise of jurisdiction would not be reasonable, LeaseWeb USA apparently recognized that it could not meet its burden because it only devoted a total of four sentences in its papers to this prong of the specific jurisdiction test, and two of those sentences were merely conclusions. Indeed, LeaseWeb USA did not address or even refer to the relevant factors or cite any case law, which is tantamount to a concession that the exercise of jurisdiction over it would be reasonable. Accordingly, based on the evidence of LeaseWeb USA's contacts in California, the Court concludes that the exercise of jurisdiction over LeaseWeb USA in California is reasonable.

LeaseWeb USA's motion to dismiss for lack of personal jurisdiction is **DENIED**.

### III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. See, e.g., *Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) cert. denied, 454 U.S. 1031 (1981)).

The Court finds that the issues raised by LeaseWeb USA are more appropriately resolved in a motion for summary judgment. Accordingly, LeaseWeb USA's motion to dismiss for failure to state a claim is **DENIED**.

### IV. CONCLUSION

For the foregoing reasons, LeaseWeb USA's Motion to Dismiss First Amended Complaint is **DENIED**. LeaseWeb USA shall file an Answer to Perfect 10's First Amended Complaint on or before **May 5, 2014**.

IT IS SO ORDERED.

# **EXHIBIT J**

## How accurate are IP geolocation services?

By Ioana Livadariu (<https://blog.apnic.net/author/ioana-livadariu/>) on 15 Sep 2020

Category: Tech matters (<https://blog.apnic.net/category/tech-matters/>)

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The proliferation of online services comprising globally-spread micro services has security and performance implications.

For this reason, understanding the underlying physical paths connecting end points has become important and given rise to numerous approaches for inferring the location of infrastructure IP addresses.

Our recent study (<https://dl.acm.org/doi/abs/10.1145/3404868.3406664>) at SimulaMet sought to investigate the accuracy and difference between these approaches.

We found there are inaccuracies in the existing geolocation approaches when mapping end-to-end Internet paths to physical locations, with 77% of IPv4 and 65% of IPv6 economy-level mappings missing at least one economy along the path of our dataset.

We also found that popular geolocation services rely heavily on data published by the Regional Internet Registries (RIRs), as geolocation mappings from these services match the geolocation from the RIR delegation files. However, geolocation databases tend to erroneously geolocate IPs that belong to Autonomous Systems (ASes) with global presence and IPs that change ownership due to merger and acquisition. Further, lack of coverage of the geo-datasets and IP-to-economy inaccuracies can add or miss economies from the economy-level end-to-end path.

## Our findings highlight the sources of IP-geolocation disagreements

We evaluated the economy-level accuracy of two dedicated IP geolocation datasets (MaxMind (<https://dev.maxmind.com/geoip/geoip2/geolite2/>) and IP2Location (<https://lite.ip2location.com>)) and two RTT-based geolocation methods (HLOC (<https://ieeexplore.ieee.org/document/8002903>) and RIPE's IPmap (<https://ipmap.ripe.net/>)), using end-to-end IPv4 and IPv6 paths between 30 vantage points located in seven economies (Canada, China, Germany, Netherlands, Norway, Sweden, and the USA).

MaxMind and IP2Location cover at least 80% of the IP addresses that are part of the collected paths. However, IPmap and HLOC have limited coverage, which can be explained by the dependency on the number of vantage points for the RTT measurements. The use of HLOC is also limited by the ability to extract correct geo-hints from pointer records (PTRs) of the measured IPs.

Most of the IPs geolocated by MaxMind and IP2Location are most likely mapped to the same economy. Moreover, for a significant percentage of these IPs, this economy-level geomapping coincides with the economy where the IP space is registered (which we

For a small percentage of IPs, the geomappings either completely or partially disagreed. Using these disagreements we identified three possible causes of erroneous IP geolocation:

1. MaxMind and IP2Location appear to use information from the whois records (economy, network name) to build their IP-to-economy mappings.
2. IPs owned by organizations with international presence are often geolocated incorrectly.
3. Merger and acquisition of organizations is a key source of IP geolocation inaccuracies.

## Do IP geolocation disagreements affect the end-to-end IP path geomappings?

IP geolocation disagreements can falsely indicate path tromboning or path detours, as well as miss economies along the IP paths. This, in turn, has security implications as it indicates that, depending on popular geolocation databases, end-hosts might be unaware of the economies their Internet traffic is traversing — something we found among our collected paths, with a high percentage of both IPv4 and IPv6 paths appearing to be detoured from Europe through the United States.

Further, we found about 77% of IPv4 and 65% of IPv6 economy-level mappings miss at least one economy along the path and that both IP paths within the same continent (short-haul paths) as well as between different continents appear to miss economies (long-haul paths).

## Is there room for improvement?

We propose a novel active measurement-based approach, which hinges on a simple idea: a location of a route can be greatly narrowed down if it is probed from within its AS.

Using existing methods (whois service, DNS names and geolocation approaches), we found the IP space owner and the possible location of the IP address, which we further used to choose a vantage point (VP) from which to traceroute to the target IP. A VP is judged suitable if it lies within the IP holder's AS and in close proximity to the initially guessed location.

Our current approach relies on publicly accessible looking glasses (LG) as VPs. We consider the IP in the same economy as the LG if the traceroute confirms a topological proximity (for example, within a few router level hops and a latency of sub-20ms). We proceed to select another LG, if the previous one proved far away from the IP under test. Figure 1 illustrates this approach.

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([https://blog.apnic.net/wp-content/uploads/2020/08/...geolocation\\_Fig1.png](https://blog.apnic.net/wp-content/uploads/2020/08/...geolocation_Fig1.png))

Figure 1 — Overview of the LG-based IP geolocation approach.

Figure 2 compares economy-level paths inferred by MaxMind and IP2Location (top part) to the path inferred by the LG-based approach (bottom part).

([https://blog.apnic.net/wp-content/uploads/2020/09/geolocation\\_Figure2.png](https://blog.apnic.net/wp-content/uploads/2020/09/geolocation_Figure2.png))

Figure 2 — Example of IP-geolocation of path from China (CN) to Norway (NO).

In the top part, the figure also shows the economies where the IP space is registered (Delegation line). The path goes from China to Norway and traverses three organizations: China Unicom, Cogent and Broadnet. Both approaches appear to miss economy geomapping data along the path in the transit network.

We plan to further develop our method for narrowing down the location of IPs that is based on probing these IPs from within the ASes that advertise them, and welcome your input on this approach in the comment section below.

Contributors: Ahmed Elmokashfi

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(<https://blog.apnic.net/2021/02/26/geofeeds-and-shepherding-where-is-that-network/>) by George Michaelson (<https://blog.apnic.net/author/ggm/>) February 26, 2021

Opinion: Plans to register the locations of networks using geofeeds could improve accuracy.

**Looking at your network from the outside in**

(<https://blog.apnic.net/2020/03/13/looking-at-your-network-from-the-outside-in/>) by Taiji Kimura (<https://blog.apnic.net/author/taiji-kimura/>) March 13, 2020

Guest Post: APNIC's NetOX provides several handy tools to help you monitor the health of your network from the outside.

**Identifying unexpected Internet services**

(<https://blog.apnic.net/2021/12/21/identifying-unexpected-internet-services/>) by Liz Izhikevich (<https://blog.apnic.net/author/liz-izhikevich/>) December 21, 2021

Guest Post: Study finds that TCP SYN-ACK is not an accurate indicator of service presence because of middlebox responses.



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7hx4JpmqjspDpdQed", "F", "1WvYU0hiyGIMI7neVthB54x", "0AHzzqfGipL8zhr9g0S5v9y4VgezLSX1SE8U", "eNzDQZC
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**PowerShellRunBox: Analysing PowerShell threats using...**

(<https://blog.apnic.net/2019/10/23/powershellrunbox-analyzing-powershell-threats-using-powershell-debugging/>) by Matt Oh (<https://blog.apnic.net/author/matt-oh/>) October 23, 2019

Guest Post: Matt Oh shows how PowerShellRunBox can help analyse complicated PowerShell scripts.

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# **EXHIBIT K**

## Resources & Tools

# Neustar IP Intelligence FAQ

## About IP Intelligence

Neustar's IP Intelligence is a family of decisioning data, which consists of IP GeoPoint and IP Reputation. IP Intelligence, the authoritative source of IP decisioning data with coverage of 99.99%\* of routable addresses worldwide, is powered by a proprietary global data collection network using patented advanced algorithms and curated by a team of Network Geography Analysts (NGAs). If a decision is made to deliver digital media to a user, block access to a site or content, or tag an IP address with a history of fraud or risk, customers can be sure that decision will be made using the most comprehensive IP geolocation, ownership, routing and reputation data available in the market.

**Need to  
geo-locate  
a specific  
IP?**

Look  
Up

## About IP Geolocation

### What is Internet Protocol (IP)?

The Internet Protocol is the method by which data is sent from one computer to another on the Internet. Each computer (known as a host) that is connected to the Internet has at least one IP address that uniquely identifies it from all other computers. The most widely used version of IP today is Internet Protocol Version 4 (IPv4) however, due to

the limit on the number of IPv4 addresses that can be allocated, Internet Protocol Version 6 is rapidly being adopted in the industry.

## What is IP geolocation?

IP geolocation is the science of determining the physical location and Internet connection characteristics of a Web visitor, and then

leveraging this data to deliver the optimal user experience and determine business strategy. IP geolocation is the technology upon which our Internet Location Intelligence platform is based.

## Do I get a unique IP address assigned to my computer?

IP addresses work more like the party lines used in the early phone systems. Most end-user IP addresses are dynamically assigned (from a pool of available IP addresses), rather than pre-assigned. When you connect to the Internet, your ISP assigns your computer an IP address that will likely be used during the life of that connection. These are dynamically assigned (or DHCP) IP addresses. When your device (Wi-fi laptop, cable/DSL, modem, etc.) disconnects from the Internet, some other device may be assigned that address for temporary use. Servers (e.g., Web site hosts) and other devices that are permanently connected to the Internet are often assigned, "static" IP addresses, when they need to have a "permanent address" where users or other servers can find them.

## Why is it so hard to locate where an IP address is?

There is no direct relationship between the IP address system and your location. Unlike a land-based phone number (land line), where the area code often indicates the caller's geographic area, an IP address is usually associated with the organization, like an Internet service provider, to which it has been allocated. And, because IP addresses are often reused, any location information previously determined becomes out of date when a new device gets that address.

## How can you identify a Web visitor's location without invading their privacy?

Neustar only stores IP geolocation data at the zip code level or higher,

e.g. city, state, country. Personal privacy is protected because we do not have information about a person, nor an email address or a street address.

---

## Using IP Geolocation

### How is IP geolocation used?

IP geolocation has demonstrated business value in five primary areas – content delivery, fraud prevention, marketing, compliance, and security. Providers of digital content use IP geolocation to determine a viewer's geographic eligibility to access their content and to enforce black out areas. Fraud prevention teams focused on e-commerce and financial services sites can compare a web visitors' registration and shipping addresses with the geolocation of the IP to detect suspicious transactions. Online marketers can execute geographically based ad campaigns just as they do in the offline world. Internet businesses that are subject to geography-based regulations – like online casinos – use the technology to make sure they operate legally. And governments and law enforcement agencies can trace Internet criminals.

### How does IP geolocation data approximate the location of a visitor?

Neustar IP geolocation data has coverage of 99.99% of the allocated Internet addresses, including information about which company has been assigned the block of IP addresses that an individual IP address of interest belongs to. That information, when combined with network data, other Neustar data, and third-party data, allows us to make an informed "guess" as to city, zip code, state, and country where the current device associated with that IP address is located.

However, when a device does not connect to the Internet directly, but instead connects via an intermediary device like a cell phone mobile gate, a VPN, or a proxy/anonymizer server, geolocation services are usually only able to establish the approximate location of the intermediary device. Connection information is typically provided to allow the user of the geolocation data to make decisions based on this lower accuracy location information.

**Related Resources**

<a href="#">Webinar</a>	<a href="#">Solution Sheet</a>	<a href="#">Whitepaper</a>	<a href="#">Webinar</a>
<a href="#">IPv6 Adoption: 5G is Finally Ushering in the New Era   Neustar</a>	<a href="#">UltraThreat Feeds: Comprehensive, Near Real-Time Insights   Neustar</a>	<a href="#">Crackdown on Password Sharing   Neustar</a>	<a href="#">Webinar: The Human Element of IP Geolocation   Neustar</a>

<b>Marketing Solutions</b>	<b>Risk Solutions</b>	<b>Communications Solutions</b>	<b>Security Solutions</b>
Fabrick™	TRUSTID Fraud Solutions	Trusted Call Solutions	Application & Network Security
Customer Analytics	TRUSTID Compliance Solutions	Business Listings	DNS Services
Customer Experience	TRUSTID Contact Center Solutions	Carrier Provisioning	Security Intelligence
Customer Intelligence		Global Numbering Insights	Web Performance Management
AdAdvisor			

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<a href="#">Clients</a>		<a href="#">Careers</a>
		<a href="#">News &amp; Events</a>
		<a href="#">Partners</a>

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Product and Sales  
Inquiries:  
**1-855-898-0036**

Customer Support:  
**1-844-NSR-CUST**

Privacy Support:  
**1-844-638-2878**



# **EXHIBIT L**

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Attorneys for Defendants  
Booking.com B.V.,  
Priceline.com LLC,  
Agoda Company PTE. LTD.,  
and OpenTable, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EXPRESS MOBILE, INC.,  
Plaintiff,  
v.  
BOOKING.COM B.V., PRICELINE.COM  
LLC, AGODA COMPANY PTE. LTD.,  
and OPENTABLE, INC.,  
Defendants.

Case No. 3:20-cv-08491-RS

**BOOKING.COM B.V.,  
PRICELINE.COM LLC, AGODA  
COMPANY PTE. LTD., AND  
OPENTABLE, INC.'S OBJECTIONS  
AND RESPONSES TO PLAINTIFF'S  
FIRST SET OF REQUESTS FOR  
PRODUCTION (NOS. 1-55)**

1       In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local  
2 Rules of the United States District Court for the Northern District of California, Defendants  
3 Booking.com B.V. (“Booking.com”), Priceline.com LLC (“priceline.com”), Agoda Company PTE.  
4 LTD. (“Agoda”), and OpenTable, Inc. (“OpenTable”) (collectively “Defendants”), by and through  
5 undersigned counsel, and without waiving any further objection or assertions of privilege to any  
6 specific documents when or if such documents are identified, hereby serves these objections and  
7 responses to Plaintiff Express Mobile, Inc.’s (“Express Mobile” or “Plaintiff”) First Set of Requests  
8 for Production of Documents (Nos. 1-55) (the “Requests”) received by Defendants on March 29,  
9 2021, pursuant to Rule 34(b)(2) of the Federal Rules of Civil Procedure. The objections and  
10 responses are based upon information presently available to, and identified by, Defendants after  
11 reasonable inquiry. As discovery proceeds, facts, information, evidence, documents, and things  
12 may be discovered that are not set forth in this response and that may be responsive to these  
13 Requests for Production. Defendants reserve the right to amend or supplement these answers to the  
14 fullest extent allowable under the Federal Rules of Civil Procedure.

15       Specific objections to each of these Requests are made on an individual basis in the  
16 responses below. In addition to these specific objections, Defendants make certain objections  
17 applicable to each Request and/or to the Requests for Production as a whole (“General Objections”).  
18 These Objections are hereby incorporated by reference into the responses made with respect to each  
19 separate Request.

20       The specific responses and objections set forth below are based upon Defendants’  
21 interpretation of the language used in the requests, and Defendants reserve the right to amend or  
22 supplement its responses and objections in the event that Express Mobile asserts an interpretation  
23 that differs from Defendants’ interpretation. Defendants reserve all objections or other questions as  
24 to the competency, relevance, materiality, privilege, or admissibility as evidence in any subsequent  
25  
26  
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28

1 proceeding in or trial of this or any other action for any purpose of Defendants' responses herein  
 2 and any document or thing identified or provided in response to the requests.

3 Subject to the foregoing, Defendants respond and object as follows:

4 **GENERAL OBJECTIONS**

5  
 6 Defendants make the following general objections to each Request in Plaintiff's First Set of  
 7 Requests for Production of Documents (Nos. 1-55) (the "Requests"), and expressly incorporates  
 8 each of them into the specific responses set forth below:

9  
 10 1. Defendants object to the Requests to the extent they fail to describe with reasonable  
 11 particularity the scope of the documents requested, or to the extent it is vague, ambiguous, or  
 12 susceptible to more than one interpretation.

13  
 14 2. Defendants object to the Requests as seeking documents not reasonably calculated  
 15 to lead to the discovery of admissible information. Defendants object to the Requests to the extent  
 16 that they seek discovery of information or documents that is not relevant to any claim or defense  
 17 raised in this action, beyond the scope of the operative complaint, and/or not proportional to the  
 18 needs of the case.

19 3. Defendants object to the Requests to the extent they are not narrowly tailored.

20 4. Defendants object to the Requests to the extent they call for documents that are not  
 21 already in the possession, custody, or control of Defendants.

22 5. Defendants object to the Requests to the extent they seek documents not created or  
 23 maintained in the ordinary course of business.

24 6. Defendants object to the Requests to the extent they seek disclosure of information  
 25 protected under the attorney-client privilege, the work-doctrine privilege, or any other applicable  
 26 privilege or immunity. Nothing contained in these Objections is intended or should be construed as  
 27

1 a waiver of the attorney-client privilege, the attorney work product doctrine, and/or any other  
2 applicable privilege or protection.

3 7. Defendants object to the Requests to the extent they seek documents and information  
4 not limited in time as not proportional to the needs of the case.

5 8. Defendants object to the Requests to the extent they seek confidential and/or  
6 proprietary business information of third parties. Defendants will not disclose third-party  
7 confidential information without the necessary consents from any such third-party. Defendants will  
8 also not search for or produce information not in its possession, custody, or control or that is more  
9 readily accessible through other sources.

10 9. Defendants object to the Requests to the extent they are vague, overly broad and  
11 impose an undue burden and are not proportional to the needs of the case, including to the extent  
12 they seek information (a) that is publicly available, (b) that is obtainable from another source that  
13 is more convenient, less burdensome, or less expensive; or (c) that is in the possession, custody, or  
14 control of Express Mobile.

15 10. Defendants object to each request to the extent it calls for the production of  
16 documents that are in the public domain and, therefore, is no greater burden for Express Mobile  
17 than Defendants to obtain.

18 11. Defendants object to the requests as premature, including because Defendants have  
19 not yet responded to the First Amended Complaint, rendering many requests not tied to issues in  
20 the case at this time. The requests are also premature as many related to Accused Products which  
21 have not yet been identified by Express Mobile as required under the Patent Local Rules. The  
22 requests are also premature as many relate to issues for which Express Mobile bears the burden, but  
23 Express Mobile has not yet made efforts to meet its burden. To the extent that Defendants agree to  
24  
25  
26  
27  
28

1 search for and produce documents, it does not indicate that Defendants thinks that the requests are  
2 proper at this time.

3 12. Defendants object to each Request that seeks “all” documents or things as  
4 disproportionate to the needs to of the case. To the extent that Defendants agree to search for and  
5 produce documents, they agree to instead conduct reasonable searches for information sufficient to  
6 show the requested subject matter.

7 13. Defendants object to each Request to the extent it calls for production of  
8 Electronically Stored Information (ESI) prior to the entry of a stipulated order for the discovery of  
9 electronically stored information on which the parties will meet and confer as set forth in the  
10 Northern District’s Guidelines for the Discovery of Electronically Stored Information and the  
11 Model Stipulation and Order Re: Discovery of Electronically Stored Information for Patent  
12 Litigation. Defendants further object to each Request to the extent it calls for the search of and  
13 production of e-mail and e-mail attachments, which is particularly burdensome and where the  
14 burden of searching and reviewing is not proportionate to the needs of the case. Defendants will not  
15 produce e-mail or e-mail attachments in response to these requests. Counsel for Defendants will  
16 meet and confer regarding entry of a stipulated order regarding the production of ESI, including the  
17 number of proposed e-mail custodians and search terms.

18 14. Defendants object to the Requests as premature to the extent they seek information  
19 relating to U.S. Pat. Nos. 6,546,397 (“the ’397 Patent”) and 7,594,168 (“the ’168 Patent”), because  
20 the instant case is stayed pending ongoing reexamination as to the ’397 and ’168 Patents. To the  
21 extent that Defendants agree to search for and produce documents, they agree to conduct reasonable  
22 searches related to U.S. Pat. Nos. 9,063,755 (“the ’755 patent”), 9,471,287 (“the ’287 patent”), and  
23 9,928,044 (“the ’044 Patent”).

1       15. Defendants object to Plaintiff's definition of "Booking-BV," "Priceline," "Agoda,"  
2 "OpenTable," "Defendants," "You," and "Your" to the extent the definitions purports to impute  
3 knowledge of unspecified or unknown parties or persons to any Defendant and to the extent it  
4 purports to include any other person or entity that is separate and distinct from any Defendant and  
5 not under any Defendant's control. Defendants further object to this definition to the extent it  
6 purports to include Defendants' attorneys and, therefore improperly seeks information protected by  
7 the attorney-client privilege, the work product doctrine, the common interest privilege and/or any  
8 other applicable privileges or immunities. In responding to these requests, Defendants are limiting  
9 their responses to information reasonably known to employees of the named Defendants.

10      16. Defendants object to the definition of "Accused Product" and "Accused  
11 Functionalities" as vague, ambiguous, and unduly burdensome, at least because the definition fails  
12 to provide the requisite specificity about what is actually being accused and seeks information  
13 unlimited in time and outside of the scope of United States patent law. Defendants further object  
14 to the definition of "Accused Products" as improperly exceeding the scope of the products identified  
15 as infringing in Plaintiff's First Amended Complaint and is therefore not proportional to the needs  
16 of the case, including with respect to the phrase "any system, platform, or website, designed,  
17 developed, made, used, offered for sale, promoted, marketed or sold by Defendants for use in the  
18 creation, development, or configuration of content, such as internet or mobile content, that can be  
19 displayed on a device." Defendants will respond to the Requests with respect to the products  
20 specifically identified as allegedly infringing in Plaintiff's Amended Complaint.

21      17. Defendants object to the Plaintiffs' Instructions and Definitions and to the requests  
22 to the extent they purport to impose any discovery obligation greater than or different from those  
23 under the Federal Rules of Civil Procedure, the Local Rules of the Northern District of California,  
24 or beyond any discovery limitations imposed by the Court.

## SPECIFIC OBJECTIONS

## **Request for Production No. 1**

All Documents relating to the structure, function, operation, or characteristics of each Accused Product, including, without limitation, software, source code and source code revision histories, product manuals, data sheets, product specifications, technical manuals, training manuals, support information, documents related to product upgrades, beta testing documents, documents related to bug fixes, product road maps, drawings, schematics, block diagrams, sketches, notebooks, memoranda, notes, correspondence, status reports, modification reports, development reports, flow charts, patent disclosures, test results, test reports and engineering reports.

## Response to Request for Production No. 1

In addition to its general objections, Defendants object to this Request as unduly burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “Accused Product” and “structure, function, operation, or characteristics.” Defendants object to this Request for Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents “relating to” certain topics. Defendants object to this Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks information regarding products beyond those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for Production as premature to the extent Defendants have not filed an Answer and Express Mobile has not served Infringement Contentions. Defendants also object to this Request because the Request does not reasonably limit the scope of the request to information related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not timebound by any relevant time period. Defendants object to this Request to

1 the extent it seeks disclosure of highly confidential source code without a stipulated protective  
2 order. Defendants also object to this Request to the extent that the burden of disclosure of  
3 sensitive information outweighs its relevance. Defendants object to this Request as unduly  
4 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
5 the needs of the case. Defendants also object to this Request to the extent that the burden of its  
6 scope and time period outweighs its relevance.  
7

8 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
9 non-privileged documents in their possession, custody, or control.

10 **Request for Production No. 2**

11 All Documents relating to the design, engineering, testing or development of each  
12 Accused Product including, without limitation, software, source code and source code revision  
13 histories, product manuals, data sheets, product specifications, technical manuals, training  
14 manuals, support information, documents related to product upgrades, beta testing documents,  
15 documents related to bug fixes, product road maps, drawings, schematics, block diagrams,  
16 sketches, notebooks, memoranda, notes, correspondence, status reports, modification reports,  
17 development reports, flow charts, patent disclosures, test results, test reports and engineering  
18 reports.  
19

20 **Response to Request for Production No. 2**

21 In addition to its general objections, Defendants object to this Request as unduly  
22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
23 “Accused Product” and “design, engineering, testing, or development.” Defendants object to this  
24 Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
25 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
26 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
27  
28

1 Defendants have not filed an Answer and Express Mobile has not served Infringement  
2 Contentions. Defendants object to this Request as overbroad, unduly burdensome, and not  
3 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
4 Defendants object to this Request for Production as overbroad, unduly burdensome, and not  
5 proportional to the needs of the case to the extent it seeks “All” documents “relating to” certain  
6 topics. Defendants object to this Request to the extent it seeks disclosure of highly confidential  
7 source code without a stipulated protective order. Defendants object to this Request as unduly  
8 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
9 the needs of the case. Defendants also object to this Request to the extent that the burden of its  
10 scope and time period outweighs its relevance.

12                   Subject to their objections, Defendants are conducting a reasonable search for responsive,  
13 non-privileged documents in their possession, custody, or control.  
14

15 **Request for Production No. 3**

16                   Documents sufficient to identify each employee, officer, and/or other personnel who is or  
17 has been engaged in the design and/or development of each Accused Product, including the  
18 identity of the design or portion of the design contributed by each employee, and also including  
19 copies of past and/or present management and organizational charts and other documents  
20 sufficient to show the corporate structure and reporting relationships within each division,  
21 subsidiary, joint venture, or other such entity of the Defendants that designs, develops, markets, or  
22 sells any Accused Product, and also including documents sufficient to identify members of  
23 development teams or development organizations.

25 **Response to Request for Production No. 3**

26                   In addition to its general objections, Defendants object to this Request as unduly  
27 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
28

1 “Accused Product” and “personnel who is or has been engaged in the design and/or  
 2 development.” Defendants object to this Request as unduly burdensome, overbroad, and not  
 3 proportional to the needs of the case to the extent it seeks information regarding products beyond  
 4 those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
 5 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
 6 has not served Infringement Contentions. Defendants also object to this Request because the  
 7 Request does not reasonably limit the scope of the request to information related to claims or  
 8 defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
 9 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 10 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 11 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 12 this Request to the extent it seeks documents regarding persons or entities that are not parties to  
 13 this case. Defendants also object to this Request to the extent that it seeks confidential and/or  
 14 proprietary business information of third parties. Defendants also object to this Request to the  
 15 extent that the burden of its scope and time period outweighs its relevance.

16       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 17 non-privileged documents in their possession, custody, or control.

18 **Request for Production No. 4**

19       Documents sufficient to identify all entities other than the Defendants or their employees  
 20 that contributed to the design of each Accused Product, including the identity of the design or  
 21 portion of the design contributed by each entity.

22 **Response to Request for Production No. 4**

23       In addition to its general objections, Defendants object to this Request as unduly  
 24 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 25

1 “Accused Product” and “contributed to the design of.” Defendants object to this Request as  
2 unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
3 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
4 Defendants object to this Request for Production as premature to the extent Defendants have not  
5 filed an Answer and Express Mobile has not served Infringement Contentions. Defendants also  
6 object to this Request because the Request does not reasonably limit the scope of the request to  
7 information related to claims or defenses in the case. Defendants object to this Request as  
8 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
9 timebound by any relevant time period. Defendants object to this Request as unduly burdensome,  
10 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
11 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
12 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
13 seeks confidential and/or proprietary business information of third parties. Defendants also object  
14 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
15 Defendants also object to this Request to the extent it seeks documents not in the possession of  
16 Defendants.  
17

18 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
19 non-privileged documents in its possession, custody, or control.  
20

21 **Request for Production No. 5**

22 All Documents relating to the architecture, design, operation, and functionality of each  
23 version, model, or other variation of each Accused Product.  
24

25 **Response to Request for Production No. 5**

26 In addition to its general objections, Defendants object to this Request as unduly  
27 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
28

1 “Accused Product” and “relating to the architecture, design, operation, and functionality.”

2 Defendants object to this Request for Production as overbroad, unduly burdensome, and not

3 proportional to the needs of the case to the extent it seeks “All” documents “relating to” certain

4 topics. Defendants object to this Request as unduly burdensome, overbroad, and not proportional

5 to the needs of the case to the extent it seeks information regarding products beyond those

6 identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for

7 Production as premature to the extent Defendants have not filed an Answer and Express Mobile

8 has not served Infringement Contentions. Defendants also object to this Request because the

9 Request does not reasonably limit the scope of the request to information related to claims or

10 defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not

11 proportional to the needs of the case to the extent it is not timebound by any relevant time period.

12 Defendants object to this Request to the extent it seeks disclosure of highly confidential source

13 code without a stipulated protective order. Defendants also object to this Request to the extent

14 that the burden of disclosure of sensitive information outweighs its relevance. Defendants object

15 to this Request to the extent it seeks information protected from disclosure by the attorney-client

16 privilege, work-product doctrine, or any other applicable privilege or immunity. Defendants

17 object to this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how

18 such request is proportional to the needs of the case. Defendants also object to this Request to the

19 extent that the burden of its scope and time period outweighs its relevance.

20

21

22

23 Subject to their objections, Defendants are conducting a reasonable search for responsive,

24 non-privileged documents in their possession, custody, or control.

25 **Request for Production No. 6**

26 For each Accused Product, each version (both public and nonpublic) of any promotional

27 or marketing materials, brochures, user guides or instructions, technical documents, programming

28

1 and/or software documents, and technical support documents.

2 **Response to Request for Production No. 6**

3 In addition to its general objections, Defendants object to this Request as unduly  
4 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
5 Product.” Defendants object to this Request for Production as overbroad, unduly burdensome, and  
6 not proportional to the needs of the case to the extent it seeks “each version.” Defendants object  
7 to this Request as unduly burdensome, overbroad, and not proportional to the needs of the case to  
8 the extent it seeks information regarding products beyond those identified in Plaintiff’s First  
9 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
10 Defendants have not filed an Answer and Express Mobile has not served Infringement  
11 Contentions. Defendants also object to this Request because the Request does not reasonably limit  
12 the scope of the request to information related to claims or defenses in the case. Defendants object  
13 to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to  
14 the extent it is not timebound by any relevant time period. Defendants object to this Request to  
15 the extent it seeks disclosure of highly confidential source code without a stipulated protective  
16 order. Defendants also object to this Request to the extent that the burden of disclosure of  
17 sensitive information outweighs its relevance. Defendants object to this Request as unduly  
18 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
19 the needs of the case. Defendants also object to this Request to the extent that it seeks documents  
20 that are publicly available, in the public domain, or otherwise available to Express Mobile, and,  
21 therefore, are no greater burden for Express Mobile than Defendants to obtain. Defendants also  
22 object to this Request to the extent that the burden of its scope and time period outweighs its  
23 relevance. Defendants also object to this Request to the relevance of non-public versions of  
24 promotional or marketing materials.

1           Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 2 non-privileged documents in their possession, custody, or control.

3           **Request for Production No. 7**

4           All Documents that reference or discuss the full product name, internal names, code  
 5 names, project names, or any other designation for each Accused Product.

6           **Response to Request for Production No. 7**

7           In addition to its general objections, Defendants object to this Request as unduly  
 8 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “any  
 9 other designation” and “Accused Product.” Defendants object to this Request for Production as  
 10 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 11 “All” documents “that reference or discuss” certain topics. Defendants object to this Request as  
 12 unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 13 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 14 Defendants object to this Request for Production as premature to the extent Defendants have not  
 15 filed an Answer and Express Mobile has not served Infringement Contentions. Defendants object  
 16 to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to  
 17 the extent it is not timebound by any relevant time period. Defendants object to this Request to  
 18 the extent it seeks disclosure of highly confidential source code without a stipulated protective  
 19 order. Defendants also object to this Request to the extent that the burden of disclosure of  
 20 sensitive information outweighs its relevance. Defendants object to this Request as unduly  
 21 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
 22 the needs of the case. Defendants also object to this Request to the extent that it seeks documents  
 23 that are publicly available, in the public domain, or otherwise available to Express Mobile, and,  
 24 therefore, are no greater burden for Express Mobile than Defendants to obtain. Defendants also  
 25  
 26  
 27  
 28

1 object to this Request to the extent that the burden of its scope and time period outweighs its  
2 relevance.

3 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
4 non-privileged documents in their possession, custody, or control.

5 **Request for Production No. 8**

6 For each model or version of each Accused Product, all versions of software and software  
7 updates for the product.

8 **Response to Request for Production No. 8**

9 In addition to its general objections, Defendants object to this Request as unduly  
10 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
11 Product.” Defendants object to this Request for Production as overbroad, unduly  
12 burdensome, and not proportional to the needs of the case to the extent it seeks “all” versions.  
13 Defendants object to this Request as unduly burdensome, overbroad, and not proportional to the  
14 needs of the case to the extent it seeks information regarding products beyond those identified in  
15 Plaintiff’s First Amended Complaint. Defendants object to this Request for Production as  
16 premature to the extent Defendants have not filed an Answer and Express Mobile has not served  
17 Infringement Contentions. Defendants also object to this Request because the Request does not  
18 reasonably limit the scope of the request to information related to claims or defenses in the case.  
19 Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the  
20 needs of the case to the extent it is not timebound by any relevant time period. Defendants object  
21 to this Request to the extent it seeks disclosure of highly confidential source code without a  
22 stipulated protective order. Defendants also object to this Request to the extent that the burden of  
23 disclosure of sensitive information outweighs its relevance. Defendants object to this Request as  
24 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
25

1 proportional to the needs of the case. Defendants also object to this Request to the extent that the  
2 burden of its scope and time period outweighs its relevance.

3 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
4 non-privileged documents in their possession, custody, or control.

5 **Request for Production No. 9**

6 For each Accused Product, all source code and software documentation for the Accused  
7 Functionalities.

8 **Response to Request for Production No. 9**

9 In addition to its general objections, Defendants object to this Request as unduly  
10 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
11 “Accused Product” and “Accused Functionalities.” Defendants object to this Request for  
12 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
13 extent it seeks “all” source code and software documentation. Defendants object to this Request  
14 as unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it  
15 seeks information regarding products beyond those identified in Plaintiff’s First Amended  
16 Complaint. Defendants object to this Request for Production as premature to the extent  
17 Defendants have not filed an Answer and Express Mobile has not served Infringement  
18 Contentions. Defendants object to this Request as overbroad, unduly burdensome, and not  
19 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
20 Defendants object to this Request to the extent it seeks disclosure of highly confidential source  
21 code without a stipulated protective order. Defendants also object to this Request to the extent  
22 that the burden of disclosure of sensitive information outweighs its relevance. Defendants object  
23 to this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how such  
24 request is proportional to the needs of the case. Defendants also object to this Request to the  
25

1 extent that the burden of its scope and time period outweighs its relevance.

2 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 3 non-privileged documents in their possession, custody, or control.

4 **Request for Production No. 10**

5 For each Accused Product, all Documents and Communications between Defendants and  
 6 third parties or customers regarding the Accused Functionalities of the Accused Product.

7 **Response to Request for Production No. 10**

8 In addition to its general objections, Defendants object to this Request as unduly  
 9 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
 10 Functionalities of the Accused Product.” Defendants object to this Request for Production as  
 11 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 12 “all” documents and communications “regarding” certain topics. Defendants object to this  
 13 Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the  
 14 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
 15 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
 16 Defendants have not filed an Answer and Express Mobile has not served Infringement  
 17 Contentions. Defendants also object to this Request because the Request does not reasonably limit  
 18 the scope of the request to information related to claims or defenses in the case. Defendants object  
 19 to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to  
 20 the extent it is not timebound by any relevant time period. Defendants object to this Request to  
 21 the extent it seeks information protected from disclosure by the attorney-client privilege, work-  
 22 product doctrine, common interest protection, or any other applicable privilege or immunity.  
 23 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 24 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 25

26 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 27 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 28

1 this Request to the extent it seeks documents regarding persons or entities that are not parties to  
 2 this case. Defendants also object to this Request to the extent that it seeks confidential and/or  
 3 proprietary business information of third parties. Defendants also object to this Request to the  
 4 extent that the burden of its scope and time period outweighs its relevance. Defendants also object  
 5 to this Request to the extent it seeks documents not in the possession of Defendants. Defendants  
 6 object to this request to the extent it seeks discovery of email or other ESI prior to the entry of a  
 7 stipulated order for the production of ESI. Defendants also object to the relevance of this Request.  
 8

9       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 10 non-privileged documents in their possession, custody, or control.

11 **Request for Production No. 11**

12       Documents and Communications concerning agreements between Defendants and third  
 13 parties under which third parties provide any components or services related to the Accused  
 14 Functionalities of the Accused Products.

16 **Response to Request for Production No. 11**

17       In addition to its general objections, Defendants object to this Request as unduly  
 18 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
 19 Functionalities of the Accused Products.” Defendants object to this Request as unduly  
 20 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 21 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 22 Defendants object to this Request for Production as premature to the extent Defendants have not  
 23 filed an Answer and Express Mobile has not served Infringement Contentions. Defendants also  
 24 object to this Request because the Request does not reasonably limit the scope of the request to  
 25 information related to claims or defenses in the case. Defendants object to this Request as  
 26 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
 27 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
 28

1 timebound by any relevant time period. Defendants object to this Request to the extent it seeks  
 2 information protected from disclosure by the attorney-client privilege, work-product doctrine,  
 3 common interest protection, or any other applicable privilege or immunity. Defendants object to  
 4 this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how such  
 5 request is proportional to the needs of the case. Defendants also object to this Request to the  
 6 extent it seeks documents regarding persons or entities that are not parties to this case. Defendants  
 7 also object to this Request to the extent that it seeks confidential and/or proprietary business  
 8 information of third parties. Defendants object to this request to the extent it seeks discovery of  
 9 email or other ESI prior to the entry of a stipulated order for the production of ESI. Defendants  
 10 also object to this Request to the extent that the burden of its scope and time period outweighs its  
 11 relevance.  
 12

13       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 14 non-privileged documents in their possession, custody, or control.  
 15

16 **Request for Production No. 12**

17       The Documents concerning actual or projected revenue, gross profits, operating profit, and  
 18 any other financial data concerning the Accused Products.  
 19

20 **Response to Request for Production No. 12**

21       In addition to its general objections, Defendants object to this Request as unduly  
 22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 23 “Accused Products” and “any other financial data.” Defendants object to this Request as unduly  
 24 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 25 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 26 Defendants object to this Request for Production as premature to the extent Defendants have not  
 27 filed an Answer and Express Mobile has not served Infringement Contentions or articulated a  
 28

1 damages theory and bears the burden. Defendants also object to this Request because the Request  
2 does not reasonably limit the scope of the request to information related to claims or defenses in  
3 the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
4 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
5 Defendants also object to this Request to the extent that the burden of disclosure of sensitive  
6 information outweighs its relevance. Defendants object to this Request as unduly burdensome,  
7 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
8 case. Defendants also object to this Request to the extent that the burden of its scope and time  
9 period outweighs its relevance.

10  
11 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
12 non-privileged documents in their possession, custody, or control.  
13

14 **Request for Production No. 13**

15 Documents sufficient to identify what products or software are bundled with, or otherwise  
16 provided for no additional charge with your products and services which include, are made with,  
17 and/or use each Accused Product.

18 **Response to Request for Production No. 13**

19 In addition to its general objections, Defendants object to this Request as unduly  
20 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
21 “Accused Product” and “products or software [] bundled with, or otherwise provided for no  
22 additional charge.” Defendants object to this Request as unduly burdensome, overbroad, and not  
23 proportional to the needs of the case to the extent it seeks information regarding products beyond  
24 those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
25 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
26 has not served Infringement Contentions or articulated a damages theory. Defendants also object  
27  
28

1 to this Request because the Request does not reasonably limit the scope of the request to  
 2 information related to claims or defenses in the case. Defendants object to this Request as  
 3 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
 4 timebound by any relevant time period. Defendants object to this Request as unduly burdensome,  
 5 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
 6 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
 7 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
 8 seeks confidential and/or proprietary business information of third parties. Defendants also object  
 9 to this Request to the extent that it seeks documents that are publicly available, in the public  
 10 domain, or otherwise available to Express Mobile, and, therefore, are no greater burden for  
 11 Express Mobile than Defendants to obtain. Defendants also object to this Request to the extent  
 12 that the burden of its scope and time period outweighs its relevance.  
 13

14       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 15 non-privileged documents in their possession, custody, or control.

16       **Request for Production No. 14**

17       All product development proposals for each Accused Product.

18       **Response to Request for Production No. 14**

19       In addition to its general objections, Defendants object to this Request as unduly  
 20 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “product  
 21 development proposals” and “Accused Product.” Defendants object to this Request for Production  
 22 as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it  
 23 seeks “All” proposals. Defendants object to this Request as unduly burdensome, overbroad, and  
 24 not proportional to the needs of the case to the extent it seeks information regarding products  
 25 beyond those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request  
 26 beyond those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request  
 27 beyond those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request  
 28 beyond those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request

1 for Production as premature to the extent Defendants have not filed an Answer and Express  
 2 Mobile has not served Infringement Contentions. Defendants also object to this Request because  
 3 the Request does not reasonably limit the scope of the request to information related to claims or  
 4 defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
 5 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 6 Defendants object to this Request to the extent it seeks information protected from disclosure by  
 7 the attorney-client privilege, work-product doctrine, common interest protection, or any other  
 8 applicable privilege or immunity. Defendants object to this Request as unduly burdensome,  
 9 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
 10 case. Defendants also object to this Request to the extent that the burden of its scope and time  
 11 period outweighs its relevance.  
 12

13       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 14 non-privileged documents in their possession, custody, or control.  
 15

16 **Request for Production No. 15**

17       For each version of each Accused Product, Documents sufficient to show the date the  
 18 product was first made, used, offered for sale, sold or licensed.  
 19

20 **Response to Request for Production No. 15**

21       In addition to its general objections, Defendants object to this Request as unduly  
 22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
 23 Product.” Defendants object to this Request as unduly burdensome, overbroad, and not  
 24 proportional to the needs of the case to the extent it seeks information regarding products beyond  
 25 those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
 26 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
 27 has not served Infringement Contentions or articulated a damages theory and bears the burden.  
 28

1 Defendants also object to this Request to the extent that it seeks documents that are publicly  
 2 available, in the public domain, or otherwise available to Express Mobile, and, therefore, are no  
 3 greater burden for Express Mobile than Defendants to obtain.

4 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 5 non-privileged documents in their possession, custody, or control.  
 6

7 **Request for Production No. 16**

8 All licenses for any technology, or software used in any of the Accused Products.

9 **Response to Request for Production No. 16**

10 In addition to its general objections, Defendants object to this Request as unduly  
 11 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “any  
 12 technology, or software” and “Accused Products.” Defendants object to this Request for  
 13 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
 14 extent it seeks “All” licenses. Defendants object to this Request as unduly burdensome,  
 15 overbroad, and not proportional to the needs of the case to the extent it seeks information  
 16 regarding products beyond those identified in Plaintiff’s First Amended Complaint. Defendants  
 17 object to this Request for Production as premature to the extent Defendants have not filed an  
 18 Answer and Express Mobile has not served Infringement Contentions or articulated a damages  
 19 theory and bears the burden. Defendants also object to this Request because the Request does not  
 20 reasonably limit the scope of the request to information related to claims or defenses in the case.  
 21 Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the  
 22 needs of the case to the extent it is not timebound by any relevant time period. Defendants also  
 23 object to this Request to the extent that the burden of disclosure of sensitive information  
 24 outweighs its relevance. Defendants object to this Request to the extent it seeks information  
 25 protected from disclosure by the attorney-client privilege, work-product doctrine, or any other  
 26

1 applicable privilege or immunity. Defendants object to this Request as unduly burdensome,  
2 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
3 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
4 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
5 seeks confidential and/or proprietary business information of third parties. Defendants also object  
6 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
7

8 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
9 non-privileged documents in their possession, custody, or control.

10 **Request for Production No. 17**

11 All Documents concerning the costs of development and implementation of any of the  
12 Accused Products.

13 **Response to Request for Production No. 17**

14 In addition to its general objections, Defendants object to this Request as unduly  
15 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “costs of  
16 development and implementation” and “Accused Products.” Defendants object to this Request for  
17 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
18 extent it seeks “All” documents “concerning” certain topics. Defendants object to this Request as  
19 unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
20 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
21 Defendants object to this Request for Production as premature to the extent Defendants have not  
22 filed an Answer, Express Mobile has not served Infringement Contentions or articulated a  
23 damages theory and bears the burden. Defendants also object to this Request because the Request  
24 does not reasonably limit the scope of the request to information related to claims or defenses in  
25 the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
26

1 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 2 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 3 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 4 this Request to the extent that the burden of its scope and time period outweighs its relevance.  
 5

6 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 7 non-privileged documents in their possession, custody, or control.  
 8

### **Request for Production No. 18**

9 All Documents concerning any studies, analyses, memoranda or presentations concerning  
 10 any cost savings attributable to using any of the Accused Products.  
 11

### **Response to Request for Production No. 18**

12 In addition to its general objections, Defendants object to this Request as unduly  
 13 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “any  
 14 studies, analyses, memoranda, or presentations” and “Accused Products.” Defendants object to  
 15 this Request for Production as overbroad, unduly burdensome, and not proportional to the needs  
 16 of the case to the extent it seeks “All” documents “concerning” certain topics. Defendants object  
 17 to this Request as unduly burdensome, overbroad, and not proportional to the needs of the case to  
 18 the extent it seeks information regarding products beyond those identified in Plaintiff’s First  
 19 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
 20 Defendants have not filed an Answer and Express Mobile has not served Infringement  
 21 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
 22 Request because the Request does not reasonably limit the scope of the request to information  
 23 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
 24 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
 25 relevant time period. Defendants object to this Request to the extent it seeks information protected  
 26  
 27  
 28

1 from disclosure by the attorney-client privilege, work-product doctrine, common interest  
 2 protection, or any other applicable privilege or immunity. Defendants object to this Request as  
 3 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
 4 proportional to the needs of the case. Defendants also object to this Request to the extent that the  
 5 burden of its scope and time period outweighs its relevance.  
 6

7 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 8 non-privileged documents in their possession, custody, or control,

9 **Request for Production No. 19**

10 All Documents referring to or constituting suggestions, requests, praise, complaints, or  
 11 feedback from users and/or purchasers of any of the Accused Products, including without  
 12 limitation all articles, press releases, advertisements, books, correspondence, statements, or other  
 13 testimonials created by or for, prepared by or for, or issued by Defendants.  
 14

15 **Response to Request for Production No. 19**

16 In addition to its general objections, Defendants object to this Request as unduly  
 17 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 18 “Accused Products” and “constituting suggestions, requests, praise, complains, or feedback.”  
 19 Defendants object to this Request for Production as overbroad, unduly burdensome, and not  
 20 proportional to the needs of the case to the extent it seeks “All” documents “referring to” certain  
 21 topics. Defendants object to this Request as unduly burdensome, overbroad, and not proportional  
 22 to the needs of the case to the extent it seeks information regarding products beyond those  
 23 identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
 24 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
 25 has not served Infringement Contentions or articulated a damages theory and bears the burden.  
 26 Defendants also object to this Request because the Request does not reasonably limit the scope of  
 27  
 28

1 the request to information related to claims or defenses in the case. Defendants object to this  
 2 Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
 3 extent it is not timebound by any relevant time period. Defendants object to this Request as  
 4 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
 5 proportional to the needs of the case. Defendants also object to this Request to the extent it seeks  
 6 documents regarding persons or entities that are not parties to this case. Defendants also object to  
 7 this Request to the extent that it seeks confidential and/or proprietary business information of  
 8 third parties. Defendants also object to this Request to the extent that it seeks documents that are  
 9 publicly available, in the public domain, or otherwise available to Express Mobile, and, therefore,  
 10 are no greater burden for Express Mobile than Defendants to obtain. Defendants also object to  
 11 this Request to the extent that the burden of its scope and time period outweighs its relevance.  
 12

13       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 14 non-privileged documents in their possession, custody, or control,

16 **Request for Production No. 20**

17       All business plans, strategic plans, operating plans, marketing plans, financial plans, sales  
 18 plans, and capital or investment plans referring or relating to such products/services concerning  
 19 the Accused Products.

21 **Response to Request for Production No. 20**

22       In addition to its general objections, Defendants object to this Request as unduly  
 23 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 24 “business plans, strategic plans, operating plans, marketing plans, financial plans, sales plans, and  
 25 capital or investment plans” and “relating to such products/services concerning the Accused  
 26 Products.” Defendants object to this Request for Production as overbroad, unduly burdensome,  
 27 and not proportional to the needs of the case to the extent it seeks “All” plans “relating to” certain  
 28

topics. Defendants object to this Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks information regarding products beyond those identified in Plaintiff's First Amended Complaint. Defendants object to this Request for Production as premature to the extent Defendants have not filed an Answer and Express Mobile has not served Infringement Contentions or articulated a damages theory and bears the burden. Defendants also object to this Request because the Request does not reasonably limit the scope of the request to information related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not timebound by any relevant time period. Defendants object to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the case. Defendants also object to this Request to the extent it seeks documents regarding persons or entities that are not parties to this case. Defendants also object to this Request to the extent that it seeks confidential and/or proprietary business information of third parties. Defendants also object to this Request to the extent that the burden of its scope and time period outweighs its relevance.

Subject to their objections, Defendants are conducting a reasonable search for responsive, non-privileged documents in their possession, custody, or control,

## Request for Production No. 21

All Documents relating to actual or prospective sales, usage, advertising, marketing, or promotion of such product/service of the Accused Products.

## Response to Request for Production No. 21

In addition to its general objections, Defendants object to this Request as unduly

1 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “relating  
2 to actual or prospective sales, usage, advertising, marketing, or promotion” and “such  
3 product/service of the Accused Products.” Defendants object to this Request for Production as  
4 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
5 “All” documents “relating to” certain topics. Defendants object to this Request as unduly  
6 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
7 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
8 Defendants object to this Request for Production as premature to the extent Defendants have not  
9 filed an Answer and Express Mobile has not served Infringement Contentions or articulated a  
10 damages theory and bears the burden. Defendants also object to this Request because the Request  
11 does not reasonably limit the scope of the request to information related to claims or defenses in  
12 the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
13 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
14 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
15 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
16 this Request to the extent that it seeks documents that are publicly available, in the public domain,  
17 or otherwise available to Express Mobile, and, therefore, are no greater burden for Express  
18 Mobile than Defendants to obtain. Defendants also object to this Request to the extent that the  
19 burden of its scope and time period outweighs its relevance.

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21  
22  
23 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
24 non-privileged documents in their possession, custody, or control,

25 **Request for Production No. 22**

26 All Documents referring or relating to any market studies, reports, or analyses concerning  
27 product design, competition, consumer surveys, consultant surveys, advertising campaigns,  
28

1 promotional or sales training material, market segments, market share, or market revenue (actual  
2 or predicted), concerning any of the Accused Products.

3 **Response to Request for Production No. 22**

4 In addition to its general objections, Defendants object to this Request as unduly  
5 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “any  
6 market studies, reports, or analyses,” “product design, competition, consumer surveys, consultant  
7 surveys, advertising campaigns, promotional or sales training material, market segments, market  
8 share, or market revenue,” and “Accused Products.” Defendants object to this Request for  
9 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
10 extent it seeks “All” documents “referring or relating to” certain topics. Defendants object to this  
11 Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the  
12 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
13 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
14 Defendants have not filed an Answer and Express Mobile has not served Infringement  
15 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
16 Request because the Request does not reasonably limit the scope of the request to information  
17 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
18 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
19 relevant time period. Defendants object to this Request to the extent it seeks information protected  
20 from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
21 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
22 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
23 Defendants also object to this Request to the extent it seeks documents regarding persons or  
24 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
25

1 seeks confidential and/or proprietary business information of third parties. Defendants also object  
2 to this Request to the extent that it seeks documents that are publicly available, in the public  
3 domain, or otherwise available to Express Mobile, and, therefore, are no greater burden for  
4 Express Mobile than Defendants to obtain. Defendants also object to this Request to the extent  
5 that the burden of its scope and time period outweighs its relevance.  
6

7 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
8 non-privileged documents in their possession, custody, or control.

9 **Request for Production No. 23**

10 The Documents regarding customer usage of the Accused Functionalities of the Accused  
11 Products.

12 **Response to Request for Production No. 23**

13 In addition to its general objections, Defendants object to this Request as unduly  
14 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “The  
15 Documents,” “customer usage,” and “Accused Functionalities of the Accused Products.”  
16 Defendants object to this Request as unduly burdensome, overbroad, and not proportional to the  
17 needs of the case to the extent it seeks information regarding products beyond those identified in  
18 Plaintiff’s First Amended Complaint. Defendants object to this Request for Production as  
19 premature to the extent Defendants have not filed an Answer and Express Mobile has not served  
20 Infringement Contentions or articulated a damages theory and bears the burden. Defendants also  
21 object to this Request because the Request does not reasonably limit the scope of the request to  
22 information related to claims or defenses in the case. Defendants object to this Request as  
23 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
24 timebound by any relevant time period. Defendants object to this Request as unduly burdensome,  
25 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
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1 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
2 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
3 seeks confidential and/or proprietary business information of third parties. Defendants also object  
4 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
5

6 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
7 non-privileged documents in their possession, custody, or control.  
8

#### **Request for Production No. 24**

9 All Documents, provided to or received by Defendants, or disseminated by Defendants at  
10 any presentation or meeting, concerning Express Mobile, the Asserted Patents and/or the  
11 possibility that Defendants might infringe any Express Mobile patent, including, but not limited  
12 to, negotiation booklets, investor or prospective investor documents, bank regulatory filings, SEC  
13 filings, customer communications, supplier or vendor communications, analyses, claim charts,  
14 memoranda, or other documents used or exchanged in connection with such presentation or  
15 meeting.  
16

#### **Response to Request for Production No. 24**

17 In addition to its general objections, Defendants object to this Request as unduly  
18 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
19 “disseminated by Defendants at any presentation or meeting” and “the possibility that Defendants  
20 might infringe any Express Mobile patent.” Defendants object to this Request for Production as  
21 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
22 “All” documents. Defendants also object to this Request because the Request does not reasonably  
23 limit the scope of the request to information related to claims or defenses in the case. Defendants  
24 object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the  
25 case to the extent it is not timebound by any relevant time period. Defendants object to this  
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1 Request to the extent it seeks information protected from disclosure by the attorney-client  
 2 privilege, work-product doctrine, common interest protection, or any other applicable privilege or  
 3 immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has  
 4 not demonstrated how such request is proportional to the needs of the case. Defendants also  
 5 object to this Request to the extent it seeks documents regarding persons or entities that are not  
 6 parties to this case. Defendants also object to this Request to the extent that it seeks confidential  
 7 and/or proprietary business information of third parties. Defendants also object to this Request to  
 8 the extent that it seeks documents that are publicly available, in the public domain, or otherwise  
 9 available to Express Mobile, and, therefore, are no greater burden for Express Mobile than  
 10 Defendants to obtain. Defendants also object to this Request to the extent that the burden of its  
 11 scope and time period outweighs its relevance.  
 12

13       Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 14 non-privileged documents in their possession, custody, or control.  
 15

16 **Request for Production No. 25**

17       All Documents concerning or supporting Your counterclaims, affirmative defenses, other  
 18 defenses and/or any position You may assert in this Litigation.  
 19

20 **Response to Request for Production No. 25**

21       In addition to its general objections, Defendants object to this Request as unduly  
 22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “any  
 23 position You may assert in this Litigation.” Defendants object to this Request for Production as  
 24 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 25 “All” documents “concerning or supporting” certain topics. Defendants object to this Request for  
 26 Production as premature to the extent Defendants have not filed an Answer, counterclaims, or  
 27 affirmative defenses. Express Mobile has not served Infringement Contentions or articulated a  
 28

1 damages theory and bears the burden, and the Request seeks contentions, expert opinions, and/or  
 2 expert testimony before such information is required to be provided. Defendants object to this  
 3 Request to the extent it seeks information protected from disclosure by the attorney-client  
 4 privilege, work-product doctrine, or any other applicable privilege or immunity.  
 5

6 This Request is premature, as Defendants have not yet filed an answer, counterclaims,  
 7 affirmative defenses, or otherwise responded to Express Mobile's complaint.  
 8

### **Request for Production No. 26**

9 All Documents concerning the Asserted Patents, including concerning any analysis of the  
 10 Asserted Patents completed by or on behalf of Defendants, including any opinion on validity or  
 11 infringement of any claim of any of the Asserted Patents.  
 12

### **Response to Request for Production No. 26**

13 In addition to its general objections, Defendants object to this Request as unduly  
 14 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase "analysis  
 15 of the Asserted Patents." Defendants object to this Request for Production as overbroad, unduly  
 16 burdensome, and not proportional to the needs of the case to the extent it seeks "All" documents  
 17 "concerning" certain topics. Defendants object to this Request for Production as premature to the  
 18 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 19 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 20 contentions, expert opinions, and/or expert testimony before such information is required to be  
 21 provided. Defendants object to this Request to the extent it seeks information protected from  
 22 disclosure by the attorney-client privilege, work-product doctrine, common interest protection, or  
 23 any other applicable privilege or immunity. Defendants object to this Request as unduly  
 24 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
 25 the needs of the case. Defendants also object to this Request to the extent that it seeks documents  
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1 that are publicly available, in the public domain, or otherwise available to Express Mobile, and,  
2 therefore, are no greater burden for Express Mobile than Defendants to obtain. Defendants also  
3 object to this Request to the extent that the burden of its scope and time period outweighs its  
4 relevance.

5 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
6 non-privileged documents in their possession, custody, or control

7 **Request for Production No. 27**

8 All Communications between Defendants and their partners, affiliates, and customers  
9 referring to or concerning any of the Asserted Patents and/or legal proceeding filed by Express  
10 Mobile.

11 **Response to Request for Production No. 27**

12 In addition to its general objections, Defendants object to this Request as unduly  
13 burdensome, overbroad, and vague and ambiguous. Defendants object to this Request for  
14 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
15 extent it seeks “All” communications “referring to or concerning” certain topics. Defendants  
16 object to this Request to the extent it seeks information protected from disclosure by the attorney-  
17 client privilege, work-product doctrine, common interest protection, or any other applicable  
18 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
19 Plaintiff has not demonstrated how such request is proportional to the needs of the case.

20 Defendants also object to this Request to the extent it seeks documents regarding persons or  
21 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
22 seeks confidential and/or proprietary business information of third parties. Defendants object to  
23 this request to the extent it seeks discovery of email or other ESI prior to the entry of a stipulated  
24 order for the production of ESI. Defendants also object to this Request to the extent that the  
25

1 burden of its scope and time period outweighs its relevance.

2 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
3 non-privileged documents in their possession, custody, or control.

4 **Request for Production No. 28**

5 All patent license agreements entered into by Defendants that cover, concern or relate to  
6 any of the Accused Products.

8 **Response to Request for Production No. 28**

9 In addition to its general objections, Defendants object to this Request as unduly  
10 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “Accused  
11 Products.” Defendants object to this Request for Production as overbroad, unduly burdensome,  
12 and not proportional to the needs of the case to the extent it seeks “All” documents “relating to”  
13 certain topics. Defendants object to this Request as unduly burdensome, overbroad, and not  
14 proportional to the needs of the case to the extent it seeks information regarding products beyond  
15 those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
16 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
17 has not served Infringement Contentions or articulated a damages theory and bears the burden.  
18 Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the  
19 needs of the case to the extent it is not timebound by any relevant time period. Defendants also  
20 object to this Request to the extent that the burden of disclosure of sensitive information  
21 outweighs its relevance. Defendants object to this Request to the extent it seeks information  
22 protected from disclosure by the attorney-client privilege, work-product doctrine, or any other  
23 applicable privilege or immunity. Defendants object to this Request as unduly burdensome,  
24 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
25 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
26

1 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
2 seeks confidential and/or proprietary business information of third parties. Defendants also object  
3 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
4

5 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
6 non-privileged documents in their possession, custody, or control.  
7

#### **Request for Production No. 29**

8 All Documents, identified by, or requested to be identified by, any interrogatory by  
9 Express Mobile served in this litigation, or any response or supplemental response of Defendants  
10 to any interrogatory served by Express Mobile in this Litigation.  
11

#### **Response to Request for Production No. 29**

12 In addition to its general objections, Defendants object to this Request as unduly  
13 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase  
14 “identified by, or requested to be identified by.” Defendants object to this Request for Production  
15 as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it  
16 seeks “All” documents. Defendants object to this Request for Production as premature to the  
17 extent Defendants have not filed an Answer and Express Mobile has not served Interrogatories.  
18 Defendants object to this Request to the extent it seeks information protected from disclosure by  
19 the attorney-client privilege, work-product doctrine, or any other applicable privilege or  
20 immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has  
21 not demonstrated how such request is proportional to the needs of the case. Defendants also  
22 object to this Request to the extent it seeks documents regarding persons or entities that are not  
23 parties to this case. Defendants also object to this Request to the extent that it seeks confidential  
24 and/or proprietary business information of third parties. Defendants also object to this Request to  
25 the extent that it seeks documents that are publicly available, in the public domain, or otherwise  
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1 available to Express Mobile, and, therefore, are no greater burden for Express Mobile than  
 2 Defendants to obtain. Defendants also object to this Request to the extent that the burden of its  
 3 scope and time period outweighs its relevance.

4 Defendants are not aware of any responsive documents and will not produce documents  
 5 pursuant to this request at this time.  
 6

7 **Request for Production No. 30**

8 All Documents concerning contracts, agreements, understandings, communications,  
 9 negotiations, meetings or discussions between Defendants and any supplier, distributor, third-  
 10 party or collaborator, about, related to, or concerning any of the Accused Products.

11 **Response to Request for Production No. 30**

12 In addition to its general objections, Defendants object to this Request as unduly  
 13 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase  
 14 “concerning contracts, agreements, understandings, communications, negotiations, meetings, or  
 15 discussions” and “Accused Products.” Defendants object to this Request for Production as  
 16 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 17 “All” documents “concerning” certain topics. Defendants object to this Request as unduly  
 18 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 19 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 20 Defendants object to this Request for Production as premature to the extent Defendants have not  
 21 filed an Answer and Express Mobile has not served Infringement Contentions or articulated a  
 22 damages theory and bears the burden. Defendants also object to this Request because the Request  
 23 does not reasonably limit the scope of the request to information related to claims or defenses in  
 24 the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
 25 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
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1 Defendants object to this Request to the extent it seeks information protected from disclosure by  
 2 the attorney-client privilege, work-product doctrine, common interest protection, or any other  
 3 applicable privilege or immunity. Defendants object to this Request as unduly burdensome,  
 4 overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the  
 5 case. Defendants also object to this Request to the extent it seeks documents regarding persons or  
 6 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
 7 seeks confidential and/or proprietary business information of third parties. Defendants object to  
 8 this request to the extent it seeks discovery of email or other ESI prior to the entry of a stipulated  
 9 order for the production of ESI. Defendants also object to this Request to the extent that the  
 10 burden of its scope and time period outweighs its relevance.

12                   Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 13 non-privileged documents in their possession, custody, or control.

15 **Request for Production No. 31**

16                   All Documents concerning any communication, negotiation, meeting or discussion,  
 17 between Defendants and any affiliate or third-party entity concerning any of the Asserted Patents  
 18 or any related patent.

19 **Response to Request for Production No. 31**

20                   In addition to its general objections, Defendants object to this Request as unduly  
 21 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase  
 22 “concerning any communication, negotiation, meeting or discussion.” Defendants object to this  
 23 Request for Production as overbroad, unduly burdensome, and not proportional to the needs of the  
 24 case to the extent it seeks “All” documents “concerning” certain topics. Defendants object to this  
 25 Request for Production as premature to the extent Defendants have not filed an Answer and  
 26 Express Mobile has not served Infringement Contentions or articulated a damages theory and  
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bears the burden. Defendants also object to this Request because the Request does not reasonably limit the scope of the request to information related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not timebound by any relevant time period. Defendants object to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, work-product doctrine, common interest protection, or any other applicable privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to the needs of the case. Defendants also object to this Request to the extent it seeks documents regarding persons or entities that are not parties to this case. Defendants also object to this Request to the extent that it seeks confidential and/or proprietary business information of third parties. Defendants also object to this Request to the extent that the burden of its scope and time period outweighs its relevance. Defendants object to this request to the extent it seeks discovery of email or other ESI prior to the entry of a stipulated order for the production of ESI. Defendants also object to this Request to the extent that it seeks documents that are publicly available, in the public domain, or otherwise available to Express Mobile, and, therefore, are no greater burden for Express Mobile than Defendants to obtain. Defendants also object to this Request to the extent it seeks documents not in the possession of Defendants.

Subject to their objections, Defendants are conducting a reasonable search for responsive, non-privileged documents in their possession, custody, or control.

## **Request for Production No. 32**

All Documents concerning the nature, size, scope of the market for, market size for market share for, usage of, adoption of, availability of, and/or demand for any of the Accused Products.

## Response to Request for Production No. 32

1 In addition to its general objections, Defendants object to this Request as unduly  
 2 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “nature,  
 3 size, scope of the market for, market size for market share for, usage of, adoption of, availability  
 4 of, and/or demand” and “Accused Products.” Defendants object to this Request for Production as  
 5 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 6 “All” documents “concerning” certain topics. Defendants object to this Request as unduly  
 7 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 8 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 9 Defendants object to this Request for Production as premature to the extent Defendants have not  
 10 filed an Answer and Express Mobile has not served Infringement Contentions or articulated a  
 11 damages theory and bears the burden. Defendants also object to this Request because the Request  
 12 does not reasonably limit the scope of the request to information related to claims or defenses in  
 13 the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
 14 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 15 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 16 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 17 this Request to the extent that the burden of its scope and time period outweighs its relevance.  
 18

19 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 20 non-privileged documents in their possession, custody, or control.  
 21

22 **Request for Production No. 33**  
 23

24 All Documents concerning any plan, activity, work or effort to design around or avoid  
 25 infringement of any of the Asserted Patents or any claim thereof, including but not limited to  
 26 documents reflecting any design, engineering or specification changes or schematic changes to  
 27 the Accused Products, and the cost associated with any design-around or avoidance of any of the  
 28

1 Asserted Patents.

2 **Response to Request for Production No. 33**

3 In addition to its general objections, Defendants object to this Request as unduly  
 4 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases “plan,  
 5 activity, work or effort,” “avoid infringement,” “design, engineering or specification changes or  
 6 schematic changes,” and “Accused Products.” Defendants object to this Request for Production as  
 7 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 8 “All” documents “concerning” certain topics. Defendants object to this Request as unduly  
 9 burdensome, overbroad, and not proportional to the needs of the case to the extent it seeks  
 10 information regarding products beyond those identified in Plaintiff’s First Amended Complaint.  
 11 Defendants object to this Request for Production as premature to the extent Defendants have not  
 12 filed an Answer and Express Mobile has not served Infringement Contentions or articulated a  
 13 damages theory and bears the burden, and the Request seeks contentions, expert opinions, and/or  
 14 expert testimony before such information is required to be provided. Defendants object to this  
 15 Request to the extent it seeks information protected from disclosure by the attorney-client  
 16 privilege, work-product doctrine, or any other applicable privilege or immunity. Defendants  
 17 object to this Request as unduly burdensome, overbroad, and Plaintiff has not demonstrated how  
 18 such request is proportional to the needs of the case. Defendants also object to this Request to the  
 19 extent that the burden of its scope and time period outweighs its relevance.

20  
 21  
 22  
 23 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 24 non-privileged documents in their possession, custody, or control.

25 **Request for Production No. 34**

26 All Documents concerning Defendants’ decision to implement the Accused  
 27 Functionalities of the Accused Products.

1           **Response to Request for Production No. 34**

2           In addition to its general objections, Defendants object to this Request as unduly  
 3 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 4 “decision to implement” and “Accused Functionalities of the Accused Products.” Defendants  
 5 object to this Request for Production as overbroad, unduly burdensome, and not proportional to  
 6 the needs of the case to the extent it seeks “All” documents “concerning” certain topics.  
 7  
 8 Defendants object to this Request as unduly burdensome, overbroad, and not proportional to the  
 9 needs of the case to the extent it seeks information regarding products beyond those identified in  
 10 Plaintiff’s First Amended Complaint. Defendants object to this Request for Production as  
 11 premature to the extent Defendants have not filed an Answer and Express Mobile has not served  
 12 Infringement Contentions or articulated a damages theory and bears the burden. Defendants also  
 13 object to this Request because the Request does not reasonably limit the scope of the request to  
 14 information related to claims or defenses in the case. Defendants object to this Request as  
 15 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it is not  
 16 timebound by any relevant time period. Defendants object to this Request to the extent it seeks  
 17 information protected from disclosure by the attorney-client privilege, work-product doctrine, or  
 18 any other applicable privilege or immunity. Defendants object to this Request as unduly  
 19 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
 20 the needs of the case. Defendants also object to this Request to the extent that the burden of its  
 21 scope and time period outweighs its relevance.

22           Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 23 non-privileged documents in their possession, custody, or control.

24           **Request for Production No. 35**

25           Any management reports or management packages concerning any of the Accused

1 Products, Express Mobile, or this litigation.

2 **Response to Request for Production No. 35**

3 In addition to its general objections, Defendants object to this Request as unduly  
 4 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 5 “management reports or management packages” and “Accused Products.” Defendants object to  
 6 this Request for Production as overbroad, unduly burdensome, and not proportional to the needs  
 7 of the case to the extent it seeks “Any” documents “concerning.” Defendants object to this  
 8 Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the  
 9 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
 10 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
 11 Defendants have not filed an Answer and Express Mobile has not served Infringement  
 12 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
 13 Request because the Request does not reasonably limit the scope of the request to information  
 14 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
 15 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
 16 relevant time period. Defendants object to this Request to the extent it seeks information protected  
 17 from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 18 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 19 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 20 Defendants also object to this Request to the extent that the burden of its scope and time period  
 21 outweighs its relevance. Defendants also object to the relevance of this Request.

22  
 23 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 24 non-privileged documents in their possession, custody, or control.  
 25  
 26

27 **Request for Production No. 36**

1           All Documents concerning the benefits to Defendants' customers of any of the Accused  
 2 Products.

3 **Response to Request for Production No. 36**

4           In addition to its general objections, Defendants object to this Request as unduly  
 5 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 6 "concerning the benefits to Defendants' customers" and "Accused Products." Defendants object  
 7 to this Request for Production as overbroad, unduly burdensome, and not proportional to the  
 8 needs of the case to the extent it seeks "All" documents "concerning" certain topics. Defendants  
 9 object to this Request as unduly burdensome, overbroad, and not proportional to the needs of the  
 10 case to the extent it seeks information regarding products beyond those identified in Plaintiff's  
 11 First Amended Complaint. Defendants object to this Request for Production as premature to the  
 12 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 13 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
 14 Request because the Request does not reasonably limit the scope of the request to information  
 15 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
 16 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
 17 relevant time period. Defendants object to this Request to the extent it seeks information protected  
 18 from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 19 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 20 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 21  
 22 Defendants also object to this Request to the extent it seeks documents regarding persons or  
 23 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
 24 seeks confidential and/or proprietary business information of third parties. Defendants also object  
 25 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
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1                   Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 2 non-privileged documents in their possession, custody, or control.

3 **Request for Production No. 37**

4                   All Documents that Defendants may rely upon or introduce at a deposition, hearing, or  
 5 trial in this Litigation.

6 **Response to Request for Production No. 37**

7                   In addition to its general objections, Defendants object to this Request as unduly  
 8 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “may rely  
 9 on.” Defendants object to this Request for Production as overbroad, unduly burdensome, and not  
 10 proportional to the needs of the case to the extent it seeks “All” documents. Defendants object to  
 11 this Request for Production as premature to the extent Defendants have not filed an Answer and  
 12 Express Mobile has not served Infringement Contentions or articulated a damages theory and  
 13 bears the burden, and the Request seeks contentions, expert opinions, and/or expert testimony  
 14 before such information is required to be provided. Defendants object to this Request to the extent  
 15 it seeks information protected from disclosure by the attorney-client privilege, work-product  
 16 doctrine, or any other applicable privilege or immunity. Defendants object to this Request as  
 17 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
 18 proportional to the needs of the case. Defendants also object to this Request to the extent that the  
 19 burden of its scope and time period outweighs its relevance.

20                   This Request is premature, as there are no currently scheduled depositions, hearings, or  
 21 trials in this case.

22 **Request for Production No. 38**

23                   All Documents relating to any claim for indemnification arising out of or otherwise  
 24 relating to this Litigation.

1           **Response to Request for Production No. 38**

2           In addition to its general objections, Defendants object to this Request as unduly  
 3 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “arising  
 4 out of or otherwise relating to this Litigation.” Defendants object to this Request for Production as  
 5 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
 6 “All” documents “relating to” certain topics. Defendants object to this Request to the extent it  
 7 seeks information protected from disclosure by the attorney-client privilege, work-product  
 8 doctrine, or any other applicable privilege or immunity. Defendants object to this Request as  
 9 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
 10 proportional to the needs of the case. Defendants also object to this Request to the extent that the  
 11 burden of its scope and time period outweighs its relevance. Defendants also object to the  
 12 relevance of this Request.

13  
 14           Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 15 non-privileged documents in their possession, custody, or control.

16           **Request for Production No. 39**

17           All Documents that support any denial in Your answer, or in any amended answer.

18           **Response to Request for Production No. 39**

19           In addition to its general objections, Defendants object to this Request as unduly  
 20 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “that  
 21 support any denial.” Defendants object to this Request for Production as overbroad, unduly  
 22 burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents.  
 23 Defendants object to this Request for Production as premature to the extent Defendants have not  
 24 filed an Answer. Defendants object to this Request to the extent it seeks information protected  
 25 from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 26  
 27  
 28

1 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 2 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 3 Defendants also object to this Request to the extent that the burden of its scope and time period  
 4 outweighs its relevance.

5 This request is premature, as Defendants have not yet filed an Answer.

6 **Request for Production No. 40**

7 All Documents related to any contention that the Asserted Patents, or any claims therein,  
 8 are invalid or unenforceable, including any alleged prior art.

9 **Response to Request for Production No. 40**

10 In addition to its general objections, Defendants object to this Request as unduly  
 11 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “related  
 12 to any contention.” Defendants object to this Request for Production as overbroad, unduly  
 13 burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents  
 14 “related to” certain topics. Defendants object to this Request for Production as premature to the  
 15 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 16 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 17 contentions, expert opinions, and/or expert testimony before such information is required to be  
 18 provided. Defendants object to this Request to the extent it seeks information protected from  
 19 disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 20 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 21 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 22 Defendants also object to this Request to the extent that the burden of its scope and time period  
 23 outweighs its relevance.

24 Subject to their objections, Defendants are conducting a reasonable search for responsive,

1 non-privileged documents in their possession, custody, or control.

2 **Request for Production No. 41**

3 All Documents related to any contention by You that Express Mobile's claims for relief  
 4 are barred by equitable doctrines, including the doctrines of estoppel, disclaimer, waiver, and/or  
 5 unclean hands.  
 6

7 **Response to Request for Production No. 41**

8 In addition to its general objections, Defendants object to this Request as unduly  
 9 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase "related  
 10 to any contentions." Defendants object to this Request for Production as overbroad, unduly  
 11 burdensome, and not proportional to the needs of the case to the extent it seeks "All" documents  
 12 "related to" certain topics. Defendants object to this Request for Production as premature to the  
 13 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 14 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 15 contentions, expert opinions, and/or expert testimony before such information is required to be  
 16 provided. Defendants object to this Request to the extent it seeks information protected from  
 17 disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 18 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 19 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 20 Defendants also object to this Request to the extent that the burden of its scope and time period  
 21 outweighs its relevance.

22 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 23 non-privileged documents in their possession, custody, or control.

24 **Request for Production No. 42**

25 All Documents related to any contention by You that Express Mobile's claims for relief  
 26

1 are barred by damages limitations, including 35 U.S.C. §§ 286 and 287.

2 **Response to Request for Production No. 42**

3 In addition to its general objections, Defendants object to this Request as unduly  
 4 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “related  
 5 to any contention.” Defendants object to this Request for Production as overbroad, unduly  
 6 burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents  
 7 “related to” certain topics. Defendants object to this Request for Production as premature to the  
 8 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 9 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 10 contentions, expert opinions, and/or expert testimony before such information is required to be  
 11 provided. Defendants object to this Request to the extent it seeks information protected from  
 12 disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 13 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 14 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 15 Defendants also object to this Request to the extent that the burden of its scope and time period  
 16 outweighs its relevance.

17 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 18 non-privileged documents in their possession, custody, or control.

19 **Request for Production No. 43**

20 All Documents related to the legal and factual bases for each and every defense alleged by  
 21 You in this Litigation.

22 **Response to Request for Production No. 43**

23 In addition to its general objections, Defendants object to this Request as unduly  
 24 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “related  
 25 to any contention.” Defendants object to this Request for Production as overbroad, unduly  
 26 burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents  
 27 “related to” certain topics. Defendants object to this Request for Production as premature to the  
 28 extent Defendants have not filed an Answer and Express Mobile has not served Infringement

1 to the legal and factual bases.” Defendants object to this Request for Production as overbroad,  
 2 unduly burdensome, and not proportional to the needs of the case to the extent it seeks “All”  
 3 documents “related to” certain topics. Defendants object to this Request for Production as  
 4 premature to the extent Defendants have not filed an Answer and Express Mobile has not served  
 5 Infringement Contentions or articulated a damages theory and bears the burden, and the Request  
 6 seeks contentions, expert opinions, and/or expert testimony before such information is required to  
 7 be provided. Defendants object to this Request to the extent it seeks information protected from  
 8 disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 9 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 10 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 11 Defendants also object to this Request to the extent that the burden of its scope and time period  
 12 outweighs its relevance.

15 This request is premature, as Defendants have not yet filed a response to Express Mobile’s  
 16 complaint.

17 **Request for Production No. 44**

18 All Documents related to any contention by Defendants that their infringement of the  
 19 Asserted Patents is not willful and that enhanced damages should not be awarded.

20 **Response to Request for Production No. 44**

21 In addition to its general objections, Defendants object to this Request as unduly  
 22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “related  
 23 to any contention.” Defendants object to this Request for Production as overbroad, unduly  
 24 burdensome, and not proportional to the needs of the case to the extent it seeks “All” documents  
 25 “related to” certain topics. Defendants object to this Request for Production as premature to the  
 26 extent Defendants have not filed an Answer and Express Mobile has not served Infringement  
 27

1 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 2 contentions, expert opinions, and/or expert testimony before such information is required to be  
 3 provided. Defendants object to this Request to the extent it seeks information protected from  
 4 disclosure by the attorney-client privilege, work-product doctrine, or any other applicable  
 5 privilege or immunity. Defendants object to this Request as unduly burdensome, overbroad, and  
 6 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 7 Defendants also object to this Request to the extent that the burden of its scope and time period  
 8 outweighs its relevance.

10 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 11 non-privileged documents in their possession, custody, or control.

12 **Request for Production No. 45**

13 All Documents received from any fact witness contacted, interviewed, or consulted by  
 14 Defendants or their agents or attorneys in connection with the Asserted Patents or this litigation.

16 **Response to Request for Production No. 45**

17 In addition to its general objections, Defendants object to this Request as unduly  
 18 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “in  
 19 connection with the Asserted Patents or this litigation.” Defendants object to this Request for  
 20 Production as overbroad, unduly burdensome, and not proportional to the needs of the case to the  
 21 extent it seeks “All” documents. Defendants object to this Request to the extent it seeks  
 22 information protected from disclosure by the attorney-client privilege, work-product doctrine, or  
 23 any other applicable privilege or immunity. Defendants object to this Request as unduly  
 24 burdensome, overbroad, and Plaintiff has not demonstrated how such request is proportional to  
 25 the needs of the case. Defendants also object to this Request to the extent it seeks documents  
 26 regarding persons or entities that are not parties to this case. Defendants also object to this  
 27  
 28

1 Request to the extent that it seeks confidential and/or proprietary business information of third  
 2 parties. Defendants also object to this Request to the extent that the burden of its scope and time  
 3 period outweighs its relevance.

4 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 5 non-privileged documents in their possession, custody, or control.  
 6

7 **Request for Production No. 46**

8 All Documents received in response to any subpoena issued in this Litigation.

9 **Response to Request for Production No. 46**

10 In addition to its general objections, Defendants object to this Request for Production as  
 11 premature as Defendants have not filed an Answer and no subpoenas have been issued in this  
 12 litigation. Defendants also object to this Request to the extent that it seeks confidential and/or  
 13 proprietary business information of third parties.  
 14

15 This request is premature, as no subpoenas have been issued in this litigation and  
 16 discovery is not yet complete.

17 **Request for Production No. 47**

18 For each Accused Product, Documents sufficient to show how and where any developed,  
 19 configured, and/or modified content is stored.  
 20

21 **Response to Request for Production No. 47**

22 In addition to its general objections, Defendants object to this Request as unduly  
 23 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 24 “Accused Product” and “how and where any developed, configured, and/or modified content is  
 25 stored.” Defendants object to this Request as unduly burdensome, overbroad, and not proportional  
 26 to the needs of the case to the extent it seeks information regarding products beyond those  
 27 identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
 28

1 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
 2 has not served Infringement Contentions. Defendants also object to this Request because the  
 3 Request does not reasonably limit the scope of the request to information related to claims or  
 4 defenses in the case. Defendants object to this Request as overbroad, unduly burdensome, and not  
 5 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 6 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 7 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 8 this Request to the extent that the burden of its scope and time period outweighs its relevance.  
 9

10 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 11 non-privileged documents in their possession, custody, or control.  
 12

**Request for Production No. 48**

13 For each Accused Product, Documents sufficient to identify any servers, data centers, or  
 14 databases that support the Accused Products.  
 15

**Response to Request for Production No. 48**

16 In addition to its general objections, Defendants object to this Request as unduly  
 17 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 18 “Accused Product” and “servers, data centers or databases that support.” Defendants object to this  
 19 Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the  
 20 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
 21 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
 22 Defendants have not filed an Answer and Express Mobile has not served Infringement  
 23 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
 24 Request because the Request does not reasonably limit the scope of the request to information  
 25 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
 26

1 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
 2 relevant time period. Defendants object to this Request as unduly burdensome, overbroad, and  
 3 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 4 Defendants also object to this Request to the extent that the burden of its scope and time period  
 5 outweighs its relevance.

7 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 8 non-privileged documents in their possession, custody, or control.

9 **Request for Production No. 49**

10 Documents sufficient to reflect (a) the date or dates on which You first became aware of  
 11 either of the Asserted Patents and (b) the circumstances under which You gained that initial  
 12 awareness.

13 **Response to Request for Production No. 49**

14 In addition to its general objections, Defendants object to this Request as unduly  
 15 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “You  
 16 first became aware” and “the circumstances under which You gained that initial awareness.”  
 17 Defendants object to this Request to the extent it seeks information protected from disclosure by  
 18 the attorney-client privilege, work-product doctrine, or any other applicable privilege or  
 19 immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has  
 20 not demonstrated how such request is proportional to the needs of the case. Defendants also  
 21 object to this Request to the extent that it seeks documents that are publicly available, in the  
 22 public domain, or otherwise available to Express Mobile, and, therefore, are no greater burden for  
 23 Express Mobile than Defendants to obtain. Defendants also object to this Request to the extent  
 24 that the burden of its scope and time period outweighs its relevance.

25 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 26

1 non-privileged documents in their possession, custody, or control.

2 **Request for Production No. 50**

3 All Documents that refer to Express Mobile's October 3, 2019 letter to You regarding the  
4 Asserted Patents, including all Documents that refer to or reflect whether or how to respond to the  
5 letter.

6 **Response to Request for Production No. 50**

7 In addition to its general objections, Defendants object to this Request as unduly  
8 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase "refer to  
9 or reflect whether or how to respond." Defendants object to this Request for Production as  
10 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks  
11 "All" documents that "refer to" certain topics. Defendants object to this Request to the extent it  
12 seeks information protected from disclosure by the attorney-client privilege, work-product  
13 doctrine, or any other applicable privilege or immunity. Defendants object to this Request as  
14 unduly burdensome, overbroad, and Plaintiff has not demonstrated how such request is  
15 proportional to the needs of the case. Defendants also object to this Request to the extent that it  
16 seeks documents that are publicly available, in the public domain, or otherwise available to  
17 Express Mobile, and, therefore, are no greater burden for Express Mobile than Defendants to  
18 obtain. Defendants also object to this Request to the extent that the burden of its scope and time  
19 period outweighs its relevance.

20 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
21 non-privileged documents in their possession, custody, or control.

22 **Request for Production No. 51**

23 All Documents that refer to or reflect Communications regarding licensing the Asserted  
24 Patents.

1           **Response to Request for Production No. 51**

2           In addition to its general objections, Defendants object to this Request as unduly  
 3 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “refer to  
 4 or reflect.” Defendants object to this Request for Production as overbroad, unduly burdensome,  
 5 and not proportional to the needs of the case to the extent it seeks “All” documents that “refer to”  
 6 certain topics. Defendants object to this Request as overbroad, unduly burdensome, and not  
 7 proportional to the needs of the case to the extent it is not timebound by any relevant time period.  
 8 Defendants object to this Request to the extent it seeks information protected from disclosure by  
 9 the attorney-client privilege, work-product doctrine, or any other applicable privilege or  
 10 immunity. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has  
 11 not demonstrated how such request is proportional to the needs of the case. Defendants object to  
 12 this request to the extent it seeks discovery of email or other ESI prior to the entry of a stipulated  
 13 order for the production of ESI. Defendants also object to this Request to the extent that it seeks  
 14 documents that are publicly available, in the public domain, or otherwise available to Express  
 15 Mobile, and, therefore, are no greater burden for Express Mobile than Defendants to obtain.  
 16 Defendants also object to this Request to the extent that the burden of its scope and time period  
 17 outweighs its relevance.

18           Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 19 non-privileged documents in their possession, custody, or control.

20           **Request for Production No. 52**

21           All Documents that You contend establish or bear in any way on the date of the  
 22 hypothetical negotiation.

23           **Response to Request for Production No. 52**

24           In addition to its general objections, Defendants object to this Request as unduly

1 burdensome, overbroad, and vague and ambiguous, including with respect to the phrase “establish  
 2 or bear in any way on the date.” Defendants object to this Request for Production as overbroad,  
 3 unduly burdensome, and not proportional to the needs of the case to the extent it seeks “All”  
 4 documents. Defendants object to this Request for Production as premature to the extent  
 5 Defendants have not filed an Answer and Express Mobile has not served Infringement  
 6 Contentions or articulated a damages theory and bears the burden, and the Request seeks  
 7 contentions, expert opinions, and/or expert testimony before such information is required to be  
 8 provided. Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has  
 9 not demonstrated how such request is proportional to the needs of the case. Defendants also  
 10 object to this Request to the extent that the burden of its scope and time period outweighs its  
 11 relevance.

12  
 13 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 14 non-privileged documents in their possession, custody, or control.

15  
**Request for Production No. 53**

16  
 17 Documents sufficient to show all of the ways You generate revenues and/or profits,  
 18 directly or indirectly, from the Accused Products.

19  
**Response to Request for Production No. 53**

20  
 21 In addition to its general objections, Defendants object to this Request as unduly  
 22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 23 “Accused Products” and “all of the ways You generate revenues.” Defendants object to this  
 24 Request as unduly burdensome, overbroad, and not proportional to the needs of the case to the  
 25 extent it seeks information regarding products beyond those identified in Plaintiff’s First  
 26 Amended Complaint. Defendants object to this Request for Production as premature to the extent  
 27 Defendants have not filed an Answer and Express Mobile has not served Infringement

1 Contentions or articulated a damages theory and bears the burden. Defendants also object to this  
2 Request because the Request does not reasonably limit the scope of the request to information  
3 related to claims or defenses in the case. Defendants object to this Request as overbroad, unduly  
4 burdensome, and not proportional to the needs of the case to the extent it is not timebound by any  
5 relevant time period. Defendants object to this Request as unduly burdensome, overbroad, and  
6 Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
7 Defendants also object to this Request to the extent it seeks documents regarding persons or  
8 entities that are not parties to this case. Defendants also object to this Request to the extent that it  
9 seeks confidential and/or proprietary business information of third parties. Defendants also object  
10 to this Request to the extent that the burden of its scope and time period outweighs its relevance.  
11

12 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
13 non-privileged documents in their possession, custody, or control.  
14

15 **Request for Production No. 54**

16 Documents sufficient to show the number of monthly, quarterly, and/or annual U.S.  
17 subscribers, U.S. total users, and U.S. active users of the Accused Products from 2014 to present,  
18 by Accused Product.  
19

20 **Response to Request for Production No. 54**

21 In addition to its general objections, Defendants object to this Request as unduly  
22 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
23 “Accused Product” and “annual U.S. subscribers, U.S. total users, and U.S. active users of the  
24 Accused Products.” Defendants object to this Request as unduly burdensome, overbroad, and not  
25 proportional to the needs of the case to the extent it seeks information regarding products beyond  
26 those identified in Plaintiff’s First Amended Complaint. Defendants object to this Request for  
27 Production as premature to the extent Defendants have not filed an Answer and Express Mobile  
28

1 has not served Infringement Contentions or articulated a damages theory and bears the burden.  
 2 Defendants object to this Request as unduly burdensome, overbroad, and Plaintiff has not  
 3 demonstrated how such request is proportional to the needs of the case. Defendants also object to  
 4 this Request to the extent it seeks documents regarding persons or entities that are not parties to  
 5 this case. Defendants also object to this Request to the extent that the burden of its scope and time  
 6 period outweighs its relevance.  
 7

8 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
 9 non-privileged documents in their possession, custody, or control.

10 **Request for Production No. 55**

11 Documents sufficient to show the number of monthly, quarterly, and/or annual U.S.  
 12 subscribers, U.S. total users, and U.S. active users of the Accused Functionalities from 2014 to  
 13 present, by Accused Functionality.  
 14

15 **Response to Request for Production No. 55**

16 In addition to its general objections, Defendants object to this Request as unduly  
 17 burdensome, overbroad, and vague and ambiguous, including with respect to the phrases  
 18 “Accused Functionalities” and “annual U.S. subscribers, U.S. total users, and U.S. active users of  
 19 the Accused Functionalities.” Defendants object to this Request as unduly burdensome,  
 20 overbroad, and not proportional to the needs of the case to the extent it seeks information  
 21 regarding products beyond those identified in Plaintiff’s First Amended Complaint. Defendants  
 22 object to this Request for Production as premature to the extent Defendants have not filed an  
 23 Answer and Express Mobile has not served Infringement Contentions or articulated a damages  
 24 theory and bears the burden. Defendants object to this Request as unduly burdensome, overbroad,  
 25 and Plaintiff has not demonstrated how such request is proportional to the needs of the case.  
 26 Defendants also object to this Request to the extent it seeks documents regarding persons or  
 27

1 entities that are not parties to this case. Defendants also object to this Request to the extent that  
2 the burden of its scope and time period outweighs its relevance.

3 Subject to their objections, Defendants are conducting a reasonable search for responsive,  
4 non-privileged documents in their possession, custody, or control.

5  
6  
7 Dated: April 26, 2021

BAKER BOTTS LLP

8  
9 By: *s/ Jeremy J. Taylor*  
10 JEREMY J. TAYLOR

11 Attorney for Defendants  
12 BOOKING.COM B.V., PRICELINE.COM  
13 LLC, AGODA COMPANY PTE. LTD.,  
14 AND OPENTABLE, INC.

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on April 26, 2021 the within document was filed with the Clerk of the  
17 Court using CM/ECF, which will send notification of such filing to the attorneys of record in this  
18 case.

19 *s/ Jeremy J. Taylor*  
20 JEREMY J. TAYLOR

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